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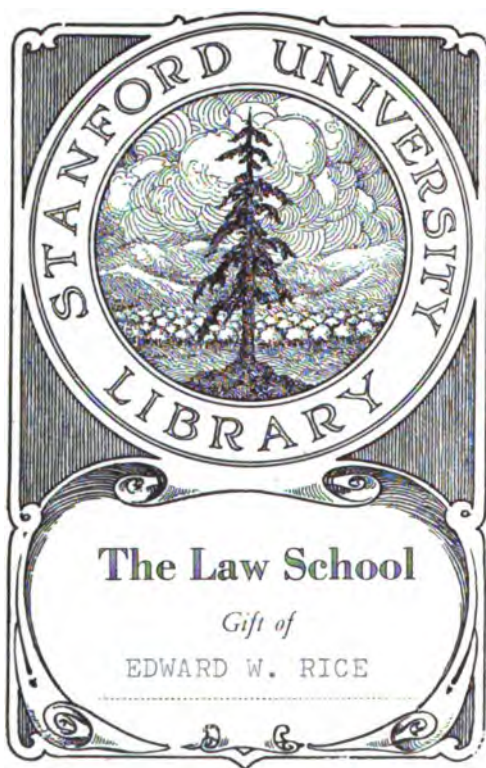
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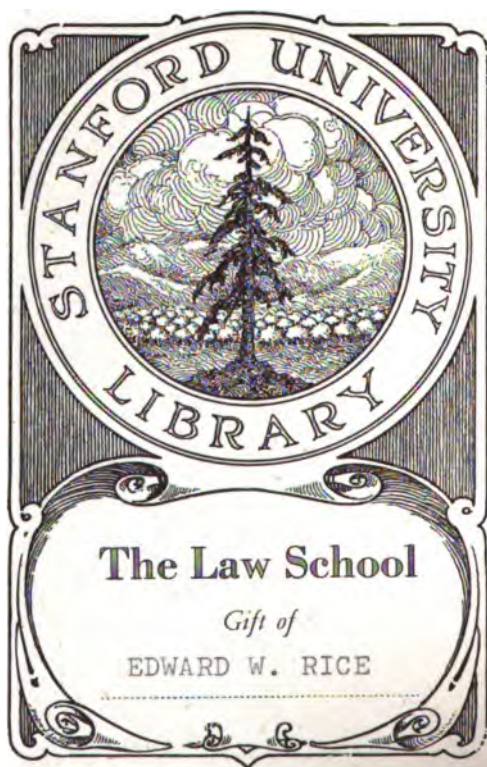
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A COMPENDIUM
OF
PRECEDENTS IN CONVEYANCING.

COMPRISING

The Forms Required in Ordinary Practice,

WITH PRACTICAL NOTES.

BY

THOMAS KEY,

ONE OF THE EDITORS OF "DAVIDSON'S PRECEDENTS";

AND

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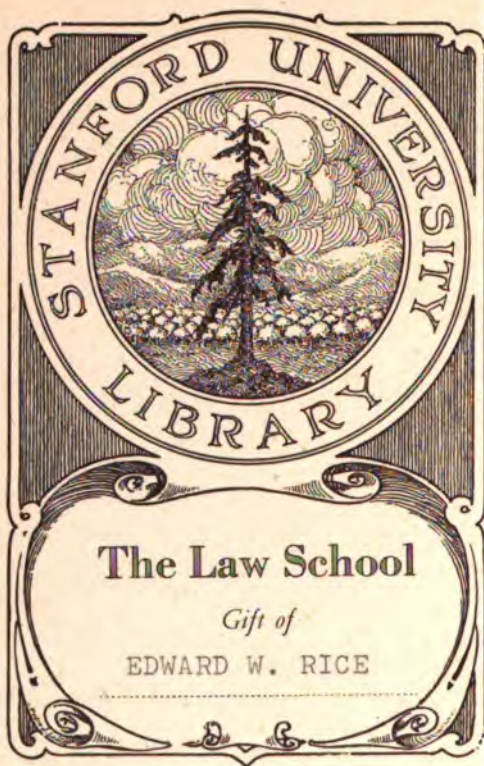
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ADDENDA ET CORRIGENDA

TO VOLUME II.

-
- Page 11 In connection with Form IV., see *In Re Watts*, 22 Ch. D. 5.
- „ 22 It may occasionally be desired to give a mortgagee power to sell for fee farm rents, in a district where that mode of sale is common : see a form of such a power by way of extension of the statutory power of sale in p. 146, 4 lines from bottom.
- „ 48 Note (b). As to the application of the statutory leasing powers to mortgages made pursuant to an agreement prior to the Act, see *In Re Nugent*, W. N. 1883, 147. For an agreement extending the powers to a mortgage made prior to the Act, see p. 880.
- „ 53 Line 12 from bottom. It has been determined that the attornment clause does not make the mortgagee liable to account as in possession, *Stanley v. Grundy*, 22 Ch. D. 478.
- „ 74 Line 11. Dele “ 10 ” and “ or II.”
- „ 97 Precedent XIII. If a mortgage by trustees contains no express covenant for payment, a provision should be inserted protecting them from any personal liability in the form following ;—“ Provided always and it is hereby agreed that the said sum of £—— hereby secured shall not constitute a debt from and shall not be recoverable against the said, *trustees*, their or either of their heirs executors or administrators personally.”
- „ 108 Line 5. Dele “ *mortgagee's indemnity clause*, p. 61.”
- „ 120 Note. As to the priority given by a stop order on a fund in Court, see *Pinnock v. Bailey*, 23 Ch. D. 497.
- „ 128 Note. As to the application of a provision in the rules of a building society for reference of disputes to arbitration to questions arising under a mortgage, see *Hack v. London Provident Building Society*, 23 Ch. D. 103.
- „ 130 Note (c). As to the right of proof in bankruptcy, where the mortgage is to secure instalments of principal and interest, see *Ex parte Bath*, 22 Ch. D. 450.
- „ 141 Prec. XXVIII. Having regard to the doubt suggested in Vol. I., p. 861, note, as to whether the Married Women's Property Act, 1882, applies to trust estates, and which if well founded may

apply also to mortgage estates, it seems better to convey the mortgaged estate to a trustee for the married woman, or (if freehold) to such uses as she shall appoint and in default to her in fee if it is desired to exclude the necessity for the husband's concurrence in future dealings.

Page 148 Note, line 6 from bottom, *Ex parte Wilkinson* is now reported, 22 Ch. D. 788.

Line 10 from bottom. See also *In re Juleff*, W. N., 1883, 32; *Ex parte Clater*, *ib.* 82.

Line 18 from bottom. See also *Ex parte Hauxwell*, W. N., 1883, 96.

„ 151 Note. In connection with *Re Marine Mansions Co.*, add a reference to *In re Asphaltic Wood Pavement Co.*, W. N., 1883, 152.

„ 152 & 153 It has been held that it is not necessary under s. 9 of the Bills of Sale Act, 1882, that the rate of interest payable should be stated; *Wilson v. Kirkwood*, W. N., 1883, 40. The case of *Davis v. Burton*, 10 Q. B. D. 414, in which a bill of sale was held void as not being in accordance with the form in the schedule to the Act of 1882, is an important illustration of the difficulty of complying with the Act, and should be carefully attended to in framing such instruments. It seems to result from that case that although the whole principal money may be made immediately payable on default in payment of any instalment or interest, a provision for capitalizing interest, or operating in effect to charge the debtor with extra interest in case of default is bad; and also that a clause making the whole sum secured immediately due in case of breach of any of the grantor's covenants will invalidate the deed, if it would have the effect of making the goods seizable contrary to the intention of s. 7 of the Act. The operation of the clause in Prec. XXX., p. 153, with reference to this requires consideration; and the point is also important where the money is made payable on demand.

„ 167 See the form of debenture in *Re Asphaltic Wood Pavement Co.*, W. N., 1883, 152.

„ 170 Note. *Ex parte Nichols*, is now reported, 22 Ch. D. 782.

„ 174 Note. A mortgagee of shares actually transferred to him may foreclose, *General Credit & Discount Co. v. Glegg*, 22 Ch. D. 549.

„ „ Note, line 7. See also *France v. Clark*, 22 Ch. D. 830.

„ 410 Note. Add a reference to *In re Eyre*, W. N., 1883, 153.

„ 471 Last line of text, “donee or donees,” should be in italics.

„ 562 Form XIX., compare the form in the fourth schedule to the Conv. Act, 1881.

„ 563 Note (c). Add a reference to *Miles v. Jarvis*, W. N., 1883, 146.

„ 575 Note (c). The reference should be to p. 609.

„ 636 Prec. I. { See also in WILLS, a form of clause requiring the tenant
„ 643 Prec. III. { for life to keep land in cultivation, p. 781; and a power
to lend money to him for the purpose, p. 781.

„ 641 Middle, after the limitation to B. for life, add, “remainder to the use of his first and other sons successively in tail male, p. 561.”

Page 655 Note (c). Add *Sotheran v. Dening*, 20 Ch. D. 99.

" 676 Note (d). Add a reference to *In re Bown*, W. N., 1883, 147; *Re Ridley*, 11 Ch. D. 645; *Herbert v. Webster*, 15 Ch. D. 610; *Cooper v. Laroche*, 17 Ch. D. 368.

" 696, 697. There is sometimes an advantage in residuary gifts in referring expressly to property over which the testator has a general power of appointment: see *In re Greaves*, W. N., 1883, 59.

" 723 }
" 728 } See the addition to the hotchpot clause in p. 725.

" 730 A general clause of this nature should not be inserted without bearing in mind the rule against perpetuities; see *Re Ridley*, 11 Ch. D. 645; *Herbert v. Webster*, 15 Ch. D. 610; *Cooper v. Laroche*, 17 Ch. D. 368.

MORTGAGES. (a)

RECITALS (b).

I. AND WHAS the sd, *mortgagee*, has at the request of the Agreement
sd, *mortgagor*, agrd to lend him the sum of £—, upon for loan by
one.

(a) As to mortgages, see Dav Prec., vol. ii., part 2; Elph. Introd. Conv., chaps. 7, 8, and 9.

See also the following recent enactments affecting mortgages, which will Recent
be noticed more particularly in the appropriate places :—the Conv. Act, 1881, enactments
44 & 45 Vict. c. 41, s. 7 (1, C, D), enabling covenants for title to be implied ; affecting
s. 15 (amended by the Conv. Act, 1882, 45 & 46 Vict. c. 39, s. 12), making mortgages.
it obligatory on a mortgagee on being paid off to transfer the mortgage if The Conv.
required ; s. 16, giving all persons interested in the equity of redemption the Act, 1881.
right to require production of the deeds in the custody of the mortgagee ;
s. 17, abolishing the right to consolidate mortgages unless expressly preserved ;
s. 18, giving to the mortgagor and mortgagee when respectively in possession
powers of leasing at the best rent unless excluded by the mortgage ; ss. 19—
24, conferring full powers of sale, insuring against fire, and appointing
receivers, on mortgagees of real or personal property, in substitution for the
more restricted provisions in 23 & 24 Vict. c. 145, which are repealed (s. 71) ;
s. 25, enlarging the power of the Court to direct a sale instead of fore-
closure ; ss. 26—29, and schedule III., supplying short forms of mortgage,
transfer and reconveyance, having a special operation ; schedule IV., giving
sample forms of mortgage and further charge, having no special operation, (see
s. 57) ; and ss. 60, 61, relating to securities on a joint account ; see also the
interpretation clause (s. 2), and the provisions in the Act applying to as-
surances generally, including mortgages, noticed above, Vol. I., CONVEYANCES The Conv.
ON SALE.—The Conv. Act, 1882, s. 7, simplifying the acknowledgment of deeds Act, 1882.
by married women (which will have only a limited operation, having regard

(b) See also the forms of recitals under the head CONVEYANCES, vol. i.,
p. 317 *et seq.*, most of which are applicable also to mortgages and other assur-
ances. Recitals in mortgages can generally in simple cases be omitted
altogether.

having the repaymt thof, with interest at the rate hinafter mentd, secured in mner hinafter appearing.

The same
by several
on joint
account.

II. AND WHAS the sd, *mortgagees*, have at the request of the sd, *mortgagor*, agrd to lend him the sum of £—— out of moneys belonging to them upon a joint account, upon having the repaymt thof, with interest, &c., *as in form I.*

The Settled
Land Act,
1882.

to the Married Women's Property Act, 1882), and ss. 8, 9, enabling powers of attorney given for value to be made irrevocable, either absolutely or for a limited time.—The Settled Land Act, 1882, 45 & 46 Vict. c. 38 (applying to all settlements existing and future, including settlements by way of trust for sale, ss. 2, 63), s. 5 (and see ss. 20, 55), enabling a tenant for life or other limited owner (see s. 58), to transfer an incumbrance affecting land sold or given in exchange or on partition, with the consent of the incumbrancer, to any other part of the settled land; s. 18 (and see ss. 20, 55), enabling a tenant for life or other limited owner to raise money by mortgage for enfranchisement, or for equality of exchange or partition; ss. 21, 32, 33, enabling capital money arising under the Act or otherwise, to be applied in discharge of incumbrances affecting settled land; s. 31, giving power to enter into contracts for a mortgage or charge; s. 45, as to giving notice to the trustees; s. 47, giving power to the Court to direct the raising of costs by mortgage of the settled land; s. 50, as to the exercise of the powers of the Act, where the estate of the tenant for life, or limited owner, is incumbered; s. 54, as to the protection of mortgagees and others dealing with the tenant for life or limited owner; and ss. 56, 57, as to concurrent powers given by the settlement; see also s. 59, extending the provisions of the Act to land vested absolutely in an infant, and ss. 60, 61 and 62, as to a tenant for life, or limited owner, who is an infant, married woman (see as to this the Married Women's Property Act, 1882), or lunatic.—The Bills of Sale Act, 1882, 45 & 46 Vict. c. 43, making important alterations in the law affecting mortgages of chattels and fixtures as regulated by the Bills of Sale Act, 1878:—and the Married Women's Property Act, 1882, 45 & 46 Vict. c. 75 (repealing the Married Women's Property Acts, 1870, 1874), by which an important change is effected in the legal status of married women, every married woman being (by s. 1) made capable of acquiring, holding, and disposing of property as her separate estate, and of contracting, and suing and being sued, as a *feme sole*; and (by ss. 2 and 5), the property of a married woman being in all cases, except property acquired before the commencement of the Act (1st Jan. 1883), by a woman married before that time, made her separate estate, subject to any settlement (s. 19).

The Bills
of Sale Act,
1882.

The
Married
Women's
Property
Act, 1882.

As to
shortening
mortgages.

Some of the enactments above referred to enable mortgages to be greatly shortened by the omission of clauses which have hitherto been necessary or usual; and they may often be further abbreviated by the omission throughout (with the aid if need be of an interpretation clause) of any express mention of the representatives and assigns of the respective parties, as in the specimen forms given in the 4th schedule to the Conv. Act, 1881; see *infra*, p. 9.

As to the stamps on mortgages, see the Stamp Act, 1870, Sched. tit., MORTGAGE, &c.; Dav. Prec. vol. ii., pt. 2, p. 256, note.

III. AND WHAS the sd, A., B. and C., *mortgagees*, have at the request of the sd, *mortgagor*, agrd to lend him the sum of £—— in the several sums following, that is to say, the sd A. £——, the sd B. £——, and the sd C. £——, upon having the repaymt of the sd several sums of £——, £——, and £——, with interest, &c., as in form I.

Agreement for loan by several on separate accounts.

IV. AND WHAS the sd, *mortgagee*, has [*mortgagees*, have] at the request of the sd, *mortgagor*, agrd to lend him the sum of £——, upon having the repaymt thof, and also of any other sum or sums of money which may be lent to the sd, *mortgagor*, his exs or ads, by or may become owing from him or them to the said, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, with interest, &c., as in form I.

Agreement to secure present loan and future advances.

V. AND WHAS upon an account stated this day between the sd, *mortgagor*, and, *mortgagee*, there is owing to the sd, *mortgagee*, from the sd, *mortgagor*, the sum of £——, and it has been agrd that the repaymt thof, with interest at the rate hinafter mentd, shall be secured in mnner hinafter appearing.

Agreement to secure sum due on account stated.

VI. AND WHAS it has been agrd that the sd loan shall be continued and the interest to accrue upon the sd sum of £——, shall [at the option of the sd, *mortgagor*,] accumulate at compound interest in mnner and subjt as hinafter appears.

Agreement for pay-ment of compound interest.

VII. AND WHAS the sd, *surety*, has agrd to join in these presents as surety for the sd, *mortgagor*, in mnner hinafter appearing.

Agreement that surety shall join.

VIII. AND WHAS the sd, *mortgagor*, [*mortgagee*] as pt of the intd secy has effected a policy of assurance on his own life, [in his own name on the life of the sd, *mortgagor*] in the — Assurance Society for the sum of £——, dated the — day of —, numbered —, and under the annual premium of £——.

Policy of assurance on life of mortgagor. Variation where effected in name of mortgagees (c).

IX. AND WHAS the sd, *mortgagor*, is entled to the several policies of assurance on his life hinafter mentd, namely a

Title of mortgagor to several policies on his life (c).

(c) It is generally better to give the particulars of the policies in the operative part.

Mortgage
of free-
holds.
Variations
for free-
holds,
leaseholds,
and copy-
holds.

policy effected in the — Society for the sum of £—, dated, &c., numbered —, and under the annual premium of £—, &c., [or, the several policies of assurance on his life hinafter mentd, or, “mentd in the schedule hto”].

X. AND WHAS by an indredated, &c., and expd, &c., in conson of the sum of £—, paid by the sd B., *mortgagee*, [B., C., and D., *mortgagees*, out of monies belonging to them on a joint account], to the said A., the sd A. covenanted with the sd B. [C., and D.] for paymt to the sd B., his [B., C., and D., their] exs, ads, or assigns, of the sum of £—, with interest for the same at the rate of — per cent. per annum, on the — day of — then next, And in case of default in paymt thof for paymt to him or them, [them or him] of interest on the sd sum of £—, or on the unpaid pt thof, at the rate afsd, by equal half-yearly paymts on the — day of — and the — day of —; And by the same indre the sd A. granted unto the said B., his [B., C., and D., their] hrs and assigns [among other hereds], All those, &c., *freehold parcels*, or, “the freehd hereds hinafter mentd and intd to be hby assured,” To hold the same unto and to the use of the sd B., his [B., C., and D., their] hrs and assigns, *if freeholds only*, “subjt to a provo for redemption of the same premes on paymt [by the sd A., his hrs, exs, ads, or assigns], to the sd B., his [B., C., and D., their] exs, ads, or assigns, of the sum of £—, with interest for the same in the meantime at the rate afsd, on the sd — day of — then next,” *if freeholds and leaseholds*, “subjt to the provo for redemption thinafter contd; And by the same indre the sd A. assigned [demised] unto the sd B., his [B., C., and C., their] exs, ads, and assigns, the premes comprd in the hinbefore recited indre of lease, To hold the same unto the sd B., his [B., C., and D., their] exs, ads, and assigns, for the residue of the sd term of — years granted by the sd lease, [except the last day thof], subjt to the provo for redemption thinafter contd; And in the sd indre now in recital was contd a provo for redemption of the sd freehd and leasehd premes, on paymt [by the sd A., his hrs,

exs, ads, or assigns], to the sd B., his [B., C., and D., their] exs, ads, or assigns, of the sd sum of £——, with interest thereon at the rate afsd, on the sd —— day of —— then next; and it was thby agrd that the sd A. should thenceforth stand possessed of the nominal reversion thby reserved of the sd term of —— years in trust for the sd B., his [B., C., and D., their] exs, ads, and assigns, subjt to such equity of redemption as might for the time being be subsisting by virtue of the provo for redemption thinbefore contd”; [*for copyholds add*, And by the same indre the sd A. covenanted with the sd B. [C. and D.,] that he the sd A. and his hrs, and all other necessary pties (if any), would forthwith, at his and their own cost, surrender All that, *copyhold parcels*, or, “the copyhd hereds hinafter mentd and covenanted to be surrendered” to the use of the sd B., his [B., C., and D., their] hrs and assigns, according to the custom of the manor of ——, in the county of ——, subjt to the manorial rents and services, and to a condon for making void the same surrender corresponding with the provo for redemption thinbefore contd as afsd;] [And in the indre now in recital were contd a power of sale and other powers and provons for further securing the re-paymt of the sd sum of £—— and interest.]

XI. AND WHAS [in psuance of the covenant in that behalf contd in the hinbefore recited indre of the —— day of ——, or, “the within-written indre,”] the sd, *mortgagor*, on the —— day of ——, surrendered the sd, or, “within-described,” copyhd hereds and premes, or, “the copyhd hereds hinafter mentd and covenanted to be surrendered,” to the use of the sd, *mortgagee*, his [*mortgagees*, their] hrs and assigns, subjt to a condon for making void the sd surrender upon paymt [by the sd, *mortgagor*, his hrs, exs, ads, or assigns], to the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, of the sum of £——, with interest for the same at the rate of —— per cent. per annum, on the —— day of —— then next.

XII. AND WHAS the sd, or, “within-mentd,” sum of £—— State of

mortgage
debt.

remains owing to the sd, *mortgagee*, on the security of the hinbefore recited, *or*, "within-written," indre, but all interest for the same has been paid up to the date of these presents, as the sd, *mortgagee*, doth hby acknowledge.

State of
mortgage
debt where
interest in
arrear.

XIII. AND WHAS the sd, *or*, "within-mentd," sum of £—— togr with the sum of £—— for interest thereon from the —— day of —— [making the total sum of £——] remains owing to the sd, *mortgagee*, on the security of the hinbefore recited, *or*, "within-written," indre.

Agreement
for further
advance.

XIV. AND WHAS the sd, *mortgagee*, has [*mortgagees*, have] agrd to lend to the sd, *mortgagor*, the further sum of £—— [out of moneys belonging to them on a joint account], upon having the repaymt thof, with interest at the rate hinafter mentd, secured in mnner hinafter appearing.

Agreement
for trans-
fer, the
mortgagor
not being
a party.

XV. AND WHAS the sd, *transferee*, has [*transferees*, have] agrd to pay to the sd, *mortgagee*, the sd sum of £——, *the amount due for principal, and interest if any, in arrear* [out of moneys belonging to them on a joint account], upon having such transfer as is hinafter contd of the sd mtge debt of £—— and interest, and the secs for the same.

Agreement
where he is
a party.

XVI. AND WHAS the sd, *transferee*, has [*transferees*, have], at the request of the sd, *mortgagor*, agrd to pay to the sd, *mortgagee*, the sum of £——, *the amount owing for principal, and interest if any*, [out of moneys belonging to them on a joint account], upon having such transfer as is hinafter contd of the sd mtge debt of £—— and interest, and the secs for the same.

Agreement
for trans-
fer and
further
advance.

XVII. AND WHAS the sd, *transferee*, has [*transferees*, have] agrd at the request of the sd, *mortgagor*, to pay to the sd, *mortgagee* [*s*], the sd sum of £—— [out of moneys belonging to them on a joint account], and to lend to the sd, *mortgagor*, the further sum of £—— [out of moneys belonging to them on a joint account] upon having such transfer as is hinafter contd of the sd mtge debt of £—— and interest, and the secs for the same, and upon having paymt of the sd sum of £——, *the further advance*, and interest secured, and of the sd sum of £——, *the original advance*, further secured

in mner hinafter appearing [*or*, upon having paymt o the said sums of £—— and £——, making an aggregate principal sum of £——(*d*), with interest at the rate hinafter mentd secured and further secured resply in mner hinafter appearing.]

XVIII. AND UPON having the repaymt of the sd sum of £—— and interest further secured in mner hinafter appearing. Agreement for further security.

XIX. WHAS the sd, *mortgagor*, is desirous of paying off the sd principal sum of £—— (*e*), and having the sd, *or*, “within-mentd” mtged premes released and reconveyed in mner hinafter appearing. Desire to redeem.

XX. WHAS all principal moneys and interest which were at any time owing on the secy of the hinbefore recited indre [s] of mtge [transfer and further charge] of the —— day of ——, &c., have been fully paid and satisfied, as the sd, *mortgagee*, doth [*mortgagees*, do] hby acknowledge, and the sd, *mortgagor*, is desirous of having, &c., as in preceding form. The same, another form.

XXI. AND WHAS the sd, *mortgagor*, has [*mortgagors*, out of That mortgage money has been paid off by instal-ments. moneys in their hands as trees of the sd settlemt, *or*, “will,” applicable for that ppose, have] paid to the sd, *mortgagee* [s], the several sums of £—— and £——, on the —— day of —— and —— day of ——, in pt satisfon of the sd mtge debt of £——, and has [have] paid to him [them] the balance thof amounting to £—— on the execution of these presents, and all interest on the principal moneys for the time being owing on the secy of the sd indre [s] of mtge [transfer and further charge] of the

(*d*) If the security is to extend to future advances insert here, “with any further sums which may hereafter be advanced by or become owing to the sd, *transferee*, his [*transferees*, their] exs, ads, or assigns, as hinafter mentd.”

(*e*) If the mortgagor is a trustee, say “out of moneys in his hands as trustee of the sd settlemt, *or*, “will,” applicable for that purpose.”

— day of — &c., up to the date of these presents has also been fully paid as the sd, *mortgagee*, doth [*mortgagees*, do] hby acknowledge.

General
agreement
to enter
into cove-
nants.

XXII. AND WHAS it has been further agrd that such other covenants, agreemts, and provons shall be entered into and made by and between the sd pties hto as are hinafter contd.

CONSIDERATIONS.

Present
advance.

I. IN CONSON of the sum of £—— now paid to the sd, *mortgagor*, by the sd, *mortgagee*, the rect whof is hby acknowledged.

Present
advance by
trustees or
others
lending
money on
a joint
account.

II. IN CONSON of the sum of £—— now paid to the sd, *mortgagor*, by the sd, *mortgagees*, out of moneys belonging to them on a joint account, the rect whof is hby acknowledged.

Sum paid
by mort-
gagee to
third party
at request
of mort-
gagor.

III. IN CONSON of the sum of £—— now paid to the sd, *third party*, at the request of the sd, *mortgagor*, by the sd, *mortgagee*, the rect and paymt whof, in mner afsd, is hby acknowledged.

Antecedent
debt.

IV. IN CONSON of the sum of £—— so owing by the sd, *mortgagor*, to the sd, *mortgagee*, as afsd.

Sums paid
by several
on distinct
accounts.

V. IN CONSON of the several sums of £——, £—— and £—— now paid to the sd, *mortgagor*, by the sd, *mortgagees*, in mner afsd, the rect of which sd several sums the sd, *mortgagor*, doth hby acknowledge.

Present
advance
and cove-
nant for
future
advance.

VI. IN CONSON of the sum of £—— now paid to the sd, *mortgagor*, by the sd, *mortgagee*, the rect, &c., and of the covenant by the sd, *mortgagee*, hinafter contd, for the loan to the sd, *mortgagor*, of the further sum of £—— by the instalments and on the condons hinafter mentd.

Mortgage
moneys
having

VII. IN CONSON of all principal moneys and interest secured by the hinbefore recited [mentd] indre[s] of mortgage

[transfer and further charge] of, &c., having been fully paid ^{been paid off.} and satisfied in manner aforesaid.

COVENANTS FOR PAYMENT (*f*).

I. THE SD, *mortgagor*, doth hereby covenant with the sd, *To pay principal.*
mortgagee, his [*mortgagees*, their] exs, ads, and assigns, that

(*f*) The following forms of operative clauses in mortgages, transfers, &c., are adapted to the case of one mortgagee, with variations throughout for a mortgage or transfer to several on a joint account.

There is in general no necessity to mention the representatives of either the covenantor or covenantee in a covenant for payment, the burden and benefit of which (being a mere personal covenant) would of course pass to the representatives of the respective parties (see the specimen forms in the fourth schedule to the Conv. Act, 1881, and s. 57); but sometimes, as where the security extends to future advances made by the representatives of the mortgagee to the representatives of the mortgagor, they must be expressly mentioned. The words in question are retained in these forms; if it is desired to shorten the deed by omitting them, it will generally be better to use an interpretation clause, see *infra*, p. 63. The words at the commencement of the covenants binding the "heirs, executors, and administrators" of the covenantor are of course omitted, see the Conv. Act, 1881, s. 59, Vol. I., p. 8, note.

In mortgages to trustees or others lending money on a joint account, it has been usual to repeat throughout the deed after the names of the mortgagees the expression, "or the survivors or survivor of them, or the exs or ads of such survivor, their or his assigns," to indicate that the right to the mortgage money, and to exercise the powers, is to survive; as well as to insert a special clause, known as the joint account clause, making the receipt of the survivors, &c., a good discharge; but by the Conv. Act, 1881, s. 60, a covenant or obligation under seal, made with two or more persons to pay money or make a conveyance or do any other act to them or for their benefit, is to enure for the benefit of the survivors and survivor, or any other person to whom the right to sue on the covenant or obligation devolves, unless a contrary intention appears; and by s. 61, where in a mortgage or obligation for payment of money, or a transfer thereof, the money is expressed to be advanced by or owing to more persons than one on a joint account, or a mortgage, &c., is made to them jointly and not in shares, the money for the time being due is to be deemed to remain money belonging to them on a joint account, and the receipt of the survivors or survivor, or of the personal representatives of the last survivor, is to be a complete discharge, notwithstanding any notice of a severance of the joint account, unless a con-

the sd, *mortgagor*, his heirs, exs, or ads will on the — day of — next, *usually the first day for payment of interest*, pay to the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, the sum of £—, *the principal sum*, with interest for the same in the meantime at the rate of — per cent. per annum from the date of these presents.

To pay interest after default.

II. AND WILL thereafter, in case and so long as the sd sum of £—, or any part thof, shall remain unpaid, or, "so long as any principal monies shall remain owing on this secy," pay to [him or] them interest for the same at the rate afsd by equal half-yearly [quarterly] payments on the — day of — &c., *specify half-yearly or quarterly days*, in every year.

By two or more jointly and severally to pay principal and interest (g).

III. THE SD, *covenantors*, do, and as a separate covenant each of them doth hby, or "do hby jointly and severally," covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, that they the sd, *covenantors*, or their respive hrs, exs, or ads, or some or one of them, will, &c., *continue as in forms I. and II.*

To pay present and future advances (h).

IV. THE SD, *mortgagor*, doth hby covenant with the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, and assigns, that

trary intention appears. Having regard to these enactments, the use of the above lengthy form, "or the survivors, &c.," may be dispensed with, and the "joint-account clause" omitted or shortened; but the intention that the powers of the mortgagees (if express powers are inserted) are to go with the debt to the survivors, &c., should be made clear, which may be done by a short clause at the end of the deed; see *infra*, p. 63.

Statutory mortgage.

The third schedule to the Conv. Act, 1881, gives a very short form of mortgage of freeholds or leaseholds expressed to be "by way of statutory mortgage," which by s. 26 implies the ordinary covenant for payment (see s. 23), and proviso for redemption; but this is a trifling gain, and although the form may be "varied or added to as circumstances require," its use (if any) is likely to be confined to small and simple transactions.

(g) See also the forms of covenants by several in Vol. I., p. 556. The precise form of the covenant seems immaterial provided each covenantor is made to covenant severally, and the shorter form in the text will suffice, having regard to the rules under the Judicature Act, 1875, Order XVI., rules 3 and 5. This form is suitable for a covenant by principal and sureties.

(h) See above, p. 9, note.

the sd, *mortgagor*, his hrs, exs, or ads, will on the — day of —, *usually the first day for payment of interest*, pay to the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, the sum of £—, *original advance*, with interest for the same in the meantime at the rate of, &c., from the date of these presents, And will on such — day of — or — day of —, *the days for payment of interest*, as shall happen next after the same respy shall be advanced or paid or become owing, pay to the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, every other sum which may hereafter be advanced or paid by him or them, [them, him, or any of them,] to, or become owing to him or them, [them, him, or any of them,] by the sd, *mortgagor*, his hrs, exs, ads, or assigns, with interest thereon at the rate afsd from the time of the same respy being advanced or paid or becoming owing.

v. AND THAT in case the sd sum of £—, *original advance*, or any other sum which may hereafter be advanced or paid or become owing as afsd, or any pt thof, shall remain unpaid after the day on which the same is hinbefore covenanted to be paid, he the sd, *mortgagor*, his hrs, exs, or ads will, so long as the same sum or any pt thof shall remain unpaid, pay to the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, interest thereon, at the rate afsd, by equal half-yearly [quarterly] paymts on the — day of —, &c., *specify half-yearly or quarterly days*, in every year, or, “and, will so long as any principal monies shall remain owing on this secy pay to [him or] them interest, &c.”

To pay interest on present and future advances.

vi. THE sd, *mortgagor*, doth hby covenant with each of them the sd, *mortgagees*, his exs, ads, or assigns, as a separate covenant, that he the sd, *mortgagor*, his hrs, exs, or ads, will, on the — day of — next repay to such respye covenantee, his exs, ads, or assigns, the sum advanced or contributed by him towards the sd aggregate loan of £—, as afsd, with interest for the same in the meantime at the rate of — per cent. per annum, from the

To pay principal and interest to several in respect of distinct debts.

date of these presents, and will thereafter in case and so long as such sum or any pt thof shall remain unpaid, pay to him or them interest for the same, &c., *as in form II.*

To re-transfer stock, and in the meantime to pay sums equal to dividends. Variation where interest is to be paid on proceeds of sale of stock.

VII. THE sd, *mortgagor*, doth hby covenant with the sd, *mortgagee*, his, [*mortgagees*, their,] exs, ads, and assigns, that he the sd, *mortgagor*, his hrs, exs, or ads, will transfer into the [name or] names of the sd *mortgagee*, his [*mortgagees*, their,] exs, ads, or assigns, the sum of £—— — £3 per cent. Annuities, on the —— day of —— next, [and will in the meantime pay to the sd, *mortgagee*, his [*mortgagees*, their,] exs, ads, or assigns, such sums of money as [he or] they would have been entled to receive as the dividends of the sd sum of £—— Annuities if the same had not been sold, at such times and in such mner as such dividends would have been payable], [*or*, and will also pay to [him or] them interest for the sd sum of £——, the equivalent as afsd of the sd sum of £—— Annuities, to be computed from the date of these presents, at the rate of —— per cent. per annum, on the sd —— day of —— next].

To pay sums equal to dividends of stock after default. Variation where interest is to be paid on proceeds of sale of stock.

VIII. AND THAT if the sd sum of £—— Annuities, or any pt thof, shall not be transferred into the [name or] names of the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, on or before the sd —— day of —— next, the sd, *mortgagor*, his hrs, exs, or ads will, so long as the same sum or any pt thof shall remain unreplaced, pay to the sd, *mortgagee*, his [*mortgagees*, their], exs, ads, or assigns, such sums of money as [he or] they would have been entled to receive as the dividends of the sd sum of £—— Annuities, if the same had not been sold, or of so much thof as shall not for the time being have been replaced, at such times and in such mner as such dividends would have been payable, [*or*, interest at the rate of —— per cent. per annum for the sd sum of £——, *the sum produced by the sale of the stock*, or for so much thof as shall not for the time being have been satisfied by a transfer of a proportionate pt of the sd sum of £—— Annuities, by

equal half-yearly paymts on the — day of — and the — day of —.]

IX. THE SD, *mortgagor*, doth hby covenant with the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, and assigns, that he the sd, *mortgagor*, his hrs, exs, or ads, will pay to the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, the sum of £—, *the principal*, with interest for the same in the meantime at the rate of — per cent. per annum, by the instalmts, at the times, and in the mner following, that is to say, the principal sum of £— by — equal [half-] yearly instalmts of £— each, whof the first is to paid on the — day of — next, and a like instalmt on every subsequent — day of — [and — day of —] until the sd principal sum of £— shall be fully paid, and the interest on the sd sum of £—, or on so much thof as shall from time to time remain unpaid, by [half-] yearly paymts on every — day of —, [and — day of —], along with the instalmts of the principal, so that upon each such day the interest up to that day shall be paid, togr with the instalmt of principal then payable as afsd. [AND further that if the sd, *mortgagor*, his hrs, exs, or ads, shall at any time make default in the paymt of any of the sd instalmts or interest, or any pt thof resply, for the period of *thirty* days after the time hinbefore appointed for the paymt thof, or in the performance of any of the covenants on the pt of the sd, *mortgagor*, herein contd, then and in any such case the whole of the sd principal money which shall for the time being remain unpaid shall forthwith become payable, and shall be paid with interest at the rate afsd by

To pay principal by instalments, and interest on unpaid principal (a).

On default in payment of any instalment the whole debt to be immediately payable (b).

(a) Where the mortgage money is to be repaid by instalments, but the mortgagee is to have the right to call in the whole sum on default in payment of any instalment (or on breach of any of the mortgagor's covenants), it is generally more convenient to insert a covenant for payment and proviso for redemption, and other clauses in the ordinary form, and to qualify the whole by the proviso at p. 35, form VI.; but the above form of covenant may be used if preferred.

(b) See *Williams v. Stern*, 5 Q. B. D. 409; *The Protector, &c., Co. v. Grice*, id. 592; *Ex parte Burden*, 16 Ch. D. 675.

the sd, *mortgagor*, his *hrs*, *exs*, or *ads*, to the sd, *mortgagee*, his, [*mortgagees*, *their*], *exs*, *ads*, or assigns, on demand.]

To pay principal on demand, and interest in the meantime. Variation where interest varies with Bank rate.

x. THE sd, *mortgagor*, doth hby covenant with the sd, *mortgagee*, his, [*mortgagees*, *their*] *exs*, *ads*, and assigns, that he the sd, *mortgagor*, his *hrs*, *exs*, or *ads*, will on demand pay to the sd, *mortgagee*, his, [*mortgagees*, *their*] *exs*, *ads*, or assigns the sum of £——, *the principal sum*, and until paymt thof will pay to [him or] them interest on the sd sum of £——, or on so much thof as shall for the time being remain unpaid, at (c) the rate of —— per cent. per annum from the date of these presents, by equal half-yearly [quarterly] payments on the —— day of ——, &c., in every year, or on the day of the repayment of the principal sum (as the case may be).

By a firm. Variation for present and future advances.

xi. THE sd, *mortgagors*, do hby jointly and severally covenant with the sd *mortgagee*, his, [*mortgagees*, *their*] *exs*, *ads*, and assigns, that the sd, *mortgagors*, or their respive *hrs*, *exs*, or *ads*, or some or one of them, or the sd firm of Z. and Co. will, &c., *for payment of principal and interest as in forms i. and ii., or present and future advances as in forms iv. and v., extending to further advances to*, “the sd, *mortgagors*, or their respive *hrs*, *exs*, *ads*, or assigns, or any of them, or the members or member for the time being of the sd firm of Z. and Co.”

To pay balance owing to bankers on account current. Variations

xii. THE sd, *mortgagor*, doth [*mortgagors*, jointly and severally do] hby covenant with the sd, *mortgagees*, their *exs*, *ads*, and assigns [the sd Banking Co. and their assigns], that the sd, *mortgagor*, his *hrs*, *exs*, or *ads*, [the sd, *mortgagors*, or their respive *hrs*, *exs*, or *ads*, or some

Interest varying with Bank rate.

(c) If the interest is to vary with the Bank rate, say “at a rate varying from time to time with and being equal to [or, one per cent. above], the rate of discount for the time being allowed by the Governor and Co. of the Bank of England on approved bills of exchange [but not to fall below 5 per cent. per annum.”]

or one of them or the members for the time being of the sd ^{where the} firm of Z. & Co.], will on demand in writing made to the sd, ^{mortgagors} *mortgagor*, his exs or ads, [*mortgagors*, or their respive exs ^{are a firm,} or ads, or some or one of them, or to the sd firm of Z. & ^{and where} *Co.*] [or left upon the premes hby mtged], pay to the sd, ^{the bank is} *mortgagees*, their exs, ads, or assigns, [the sd Banking ^{a company.} *Co.* or their assigns], or one of the cashiers for the time being of the sd bank, the balance which on the account current of the sd, *mortgagor*, [firm of Z. & Co. for the time being] with the sd, *mortgagees*, [bank] shall be for the time being owing in respect of bills, notes, or drafts accepted, paid or discounted, or advances made to or for the use or accommodation of the sd, *mortgagor*, [firm of Z. & Co.], and for interest, commission or otherwise, togr with interest on the sd balance from the time of such demand being made or left till the time of paymt at the rate of — per cent. per annum.

XIII. AND the sd, *surety*, doth hby covenant with the sd, ^{By surety} *mortgagee*, his [*mortgagees*, their] exs, ads, and assigns, ^{to pay} that in case default shall at any time be made by the sd, ^{interest on} *mortgagor*, his hrs, exs, or ads, in paymt of the interest ^{default of} on the sd sum of £—, or any pt thof psuant to his covenant ^{mortgagor.} hinbefore contd, then and in any and every such case the sd, *surety*, his hrs, exs, or ads, will on demand pay to the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, the interest which shall be so in arrear and unpaid.

HABENDUM.

I. To HOLD the sd hereds and premes hby assured (a) ^{Freeholds.} UNTO AND TO THE USE of the sd, *mortgagee*, his, [*mort-*

(a) The word "assured," or "conveyed," is used here and elsewhere as being of general import, but if preferred, say, "granted," or "appointed," or "appointed and granted," as the case may be.

gagees, their] heirs and assigns (b) (c), subj to the provo for redemption hinafter contd.

Leaseholds
by assign-
ment.
Variation
for demise.

II. To HOLD the sd hereds and premes hby assigned [demised] UNTO the sd, *mortgagee*, his [*mortgagees, their*] exs, ads, and assigns, henceforth for all the residue now unexpired of the sd term of — years [respive -terms of — years and — years] granted by the sd indre [several indres] of lease [except the last day thof, or, “of each such term”] (c) subj to the proviso for redemption hinafter contd.

Personalty.

III. To HOLD the sd premes hby assigned UNTO the sd, *mortgagee*, his [*mortgagees, their*] exs, ads, and assigns (c), subj to the proviso for redemption hinafter contd.

For trans-
fer of mort-
gage of
freeholds.
Variations
where
new equity
of redemp-
tion is
created.

IV. To HOLD the sd hereds and premes hby assured UNTO and to the use of the sd, *transferee*, his [*transferees, their*] hrs and assigns, subj to such equity of redemption as the same premes are now subj to by virtue of the hinbefore recited, or, “mentd,” or, “within written,” indre of mtge, [indres of mtge and further charge] on paymt to the sd, *transferee*, his [*transferees, their*] exs, ads, or assigns of the sd sum of £—, *the principal*, and the interest due and to become due for the same, or, *if a new equity of redemption is created*, free from all equity of redemption under or by virtue of the hinbefore recited, or, “mentd,” or, “within written,” indre of mtge [indres of mtge and further charge], but subj to the provo for redemption hinafter contd.

The same
for lease-
holds.

V. To HOLD the sd hereds and premes hby assigned unto the sd, *transferee*, his, [*transferees, their*] exs, ads, and assigns, for the residue now unexpired of the sd term [several

(b) If preferred, for “hrs and assigns,” say “in fee simple;” see the Conv. Act, 1881, s. 51, Vol. I., p. 359, note.

(c) If the mortgage is subject to a prior charge or charges, add here “Subjt to the sd indre of mtge of the — day of — and the sum of £— and interest thby secured as afsd, and,” or, “subj to the prior charges and incumbrances to which the sd premes are hinbefore expd to be subj and.”

terms] for which the same premes were [resply] assigned [demised] by the hinbefore recited, *or*, "mentd," *or*, "within written," indre of mtge, [And for all the este of the sd mtgee [s] in the sd nominal reversion [s] reserved by the same indre of the sd term[s] created by the sd lease [respive leases,]] subjt to such equity, &c., *or if a new proviso for redemption is created*, "free from, &c., but subjt, &c.," *as in last form*.

VI. To HOLD the sd premes hby assigned, UNTO the sd, *transferee*, his, [*transferees*, their] exs, ads, and assigns, subjt to such right, &c., *or*, "free from, &c., but subjt, &c.," *as in form IV*. The same for personality.

VII. To HOLD the sd premes hby assured and released unto, &c., &c., *as the case may be*, freed and discharged from the sd sum of £—— and the interest thereon, and all moneys now or at any time heretofore owing on the secy of, and from all charges, claims, and demands whatsoever, under or by virtue of the hinbefore recited, *or*, "mentd," *or*, "within written," indre of mtge, *or*, "indres of mtge, transfer, and further charge." For reconveyance.

PROVISOES FOR REDEMPTION (a).

I. PROVD ALWAYS, and it is hby agrd that if the sd, *mortgagor*, his hrs, exs, ads, or assigns, shall on the sd —— day Freeholds.

(a) It is better in ordinary cases to adhere to the strict form of proviso for redemption on payment of the mortgage money on a specified day, to ensure that the mortgagee shall have the right of foreclosure, as is done in the form of mortgage in the 4th sched. to the Conv. Act, 1881; and in the special statutory form of mortgage in the 3rd sched. to that Act, a similar proviso for redemption is implied, see s. 26, above, p. 10, nota. But the power of the Court to direct a sale instead of foreclosure is considerably enlarged by the same Act, s. 25. As to form of proviso for redemption.

By the Conv. Act, 1881, s. 15 (as amended by the Conv. Act, 1882, s. 12, in consequence of the decision in *Teevan v. Smith*, 20 Ch. D. 724), the mortgagor, or any subsequent incumbrancer, is entitled on paying off a mortgage to require the mortgagee (unless he is or has been in possession) to transfer the debt and security to any third person instead of reconveying, notwithstanding Power of mortgagor to require transfer.

of — next, pay to the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, the sd sum of £—, the *principal*, with interest for the same in the meantime at the rate afsd, the sd, *mortgagee*, his [*mortgagees*, their] exs, ads (b), or assigns, shall at any time thereafter, upon the request and at the cost of the sd, *mortgagor*, his hrs, exs, ads, or assigns, reconvey the sd premes hinbefore granted (c), to the use of the sd, *mortgagor*, his hrs and assigns, or as he or they shall direct (d).

Leaseholds
or per-
sonalty.

II. PROVID ALWAYS, and it is hby agrd that if, &c., as in preceding form, the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, shall at any time thereafter upon the request and at the cost of the sd, *mortgagor*, his exs, ads, or assigns, re-assign, [*or in a mortgage of leaseholds by demise, surrender or assign*] the sd premes hinbefore assigned [*demised*] to the sd, *mortgagor*, his exs, ads and assigns, or as he or they shall direct (d).

Freeholds
with lease-
holds or
personalty.

III. PROVID ALWAYS, and it is hby agrd that if, &c., as in form I., the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads (b), or assigns, shall at any time thereafter, upon the request and at the cost of the sd, *mortgagor*, his hrs, exs, ads, or

any stipulation to the contrary ; see as to the previous law, Dav. Prec. vol. ii., pt. 2, p. 280.

Vesting of
mortgage
estates in
personal
representa-
tives.

(b) As by the Conv. Act, 1881, s. 30 (repealing the Vendor and Purchaser Act, 1874, s. 4), a mortgage estate of inheritance, or *pur autre vie* limited to the heir, devolves on the death (whether testate or intestate) of a sole mortgagee or the survivor of joint mortgagees, on his personal representatives ; the proviso should be for re-conveyance by the " exs, ads," (instead of " heirs ") " and assigns."

(c) Or, " appointed," or " appointed and granted," as the case may be ; or if preferred, " assured " or " conveyed ;" see p. 15, note.

(d) If there be a prior charge or charges, add, " subjt to the sd prior mtge of the — day of — if subsisting," or, " subjt to the sd prior charges and incumbrances hinbefore mentd or referred to, or such of them as shall for the time being be subsisting."

assigns, reconvey the sd freehd premes hinbefore granted (e) to the use of the sd, *mortgagor*, his hrs and assigns, and re-assign, [*or in the case of leaseholds mortgaged by demise, surrender or assign*] the sd premes hinbefore assigned [demised] to the sd, *mortgagor*, his exs, ads, and assigns, or as he or they shall direct (f).

IV. SUBJT to a condon for making void the surrender to be made in psuance of this covenant if the sd, *mortgagor*, his hrs, exs, ads, or assigns shall on the sd — day of — next, pay to the sd, *mortgagee*, his, [*mortgagees, their*] exs, ads, or assigns, the sd sum of £—, with interest for the same in the meantime at the rate afsd. Copyholds mortgaged alone.

V. SUBJT to a condon for making void the surrender to be made in psuance of this covenant corresponding with the provo for redemption hinbefore contd. Copyholds mortgaged with freeholds, leaseholds, or personality.

VI. PROVD ALWAYS, and it is hby agrd that if the sd, *mortgagor*, his hrs, exs, ads, or assigns shall, on the sd — day of — next, pay to the sd, *mortgagee*, his, [*mortgagees, their*] exs, ads, or assigns, the sd sum of £—, *the principal*, with interest thereon in the meantime at the rate afsd, and shall on such — day of — or — day of — as shall happen next after the same respdy shall be advanced or paid or become owing, pay to the sd, *mortgagee*, his, [*mortgagees, their*] exs, ads, or assigns, every other sum of money which may be advanced or paid by or become owing (except for interest) to [him or] them as afsd with interest thereon as afsd, then and in such case the sd, *mortgagee*, &c., as in form I., II., or III. In mortgage to secure present and future advances.

VII. PROVD ALWAYS, and it is hby agrd, that if the sd, *mortgagor*, his hrs, exs, ads, or assigns shall, on the sd — day of — next, transfer into the name or names of the sd, *mortgagee*, his, [*mortgagees, their*] exs, ads, or assigns, the sum of £— — £3 per cent. Annuities, and shall in the meantime pay to [him or] them such sums of money as [he or] they would have been entled to receive as the dividends In stock mortgage.

(e) See note (c) preceding page.

(f) See note (d) preceding page.

of the sd sum of £—— Annuities if the same had not been sold, at such times and in such mner as such dividends would have been payable, [or, and shall also pay to [him or] them interest for the sd sum of £——, the equivalent as afsd of the sd sum of £—— Annuities to be computed from the date of these presents at the rate afsd, on the sd — day of — next], then and in such case, &c., as in form I., II., or III.

Where principal is to be repaid by instalments.

VIII. PROVD ALWAYS, and it is hby agrd, that if the sd, *mortgagor*, his hrs, exs, ads, or assigns, shall pay to the sd, *mortgagee*, his, [mortgagees, their] exs, ads, or assigns, the sd sum of £——, *the principal*, togr with interest thereon, or on the unpaid pt thof for the time being in the meantime, by the instalmts, at the times, at the rate, and in mner hinbefore mentd, psuant to the covenant in that behalf hinbefore contd, then, &c., as in form I., II., or III.

Where principal is to be paid on demand.

IX. PROVD ALWAYS, and it is hby agrd, that if the sd, *mortgagor*, his hrs, exs, ads, or assigns, shall on demand pay to the sd, *mortgagee*, his, [mortgagees, their] exs, ads, or assigns, the sd principal sum of £——, and shall, until paymt thof, pay to [him or] them interest on the sd sum of £——, or on so much thof as shall for the time being remain unpaid at the rate afsd on the days hinbefore mentd, psuant to the covenant in that behalf hinbefore contd, then, &c., as in form I., II., or III.

Freeholds or leaseholds to trustees of strict settlement.

X. PROVD, &c., that if the sd, *trustees*, or other the trees or tree for the time being of the sd recited indre of settlemt [will] or the sd, *tenant for life*, his hrs, exs, ads, or assigns, or any other pson or psons interested in the equity of redemption of the sd premes hinbefore assured, shall, &c., *the reconveyance to be*, "at the cost of the pson or psons requiring the same," *freeholds to be reconveyed*, "to the uses and upon the trusts, to and upon which the same premes stood limited by virtue of the hinbefore recited indre of settlemt [will], immediately before the execution of these presents, or such of the same uses and trusts as shall be subsisting," *leaseholds to be re-assigned or surrendered*, "to

the sd trees, their exs, ads, or assigns, or other the trees or tree for the time being of the sd recited indre of settlemt [will] upon the trusts upon which the same were held by virtue of the sd indre of settlemt [will] immediately before the execution of these presents, or such of the same as shall be subsisting."

XI. PROVD, &c., that if the sd, *mortgagors*, or either of them, or any pson or psons interested in the equity of redemption of the sd premes hinbefore assured shall, &c., *as in form I., the reconveyance to be*, "at the cost of the pson or psons requiring the same," to such uses, &c., *repeating the power of appointment verbatim*, and in default of and subjt to any such appointmt to the uses and upon the trusts to and upon which the sd premes stood limited by virtue of the sd indre of, &c., [will] in default of any exercise of the joint power of appointmt vested in the sd, *mortgagors*, as afsd, immediately before the execution of these presents.

XII. PROVD, &c., that if the sd, *mortgagors*, or their respive hrs, exs, or ads, or the members or member for the time being of the sd firm of Z. & Co., or any of them shall, &c., then the sd, *mortgagee*, his [mortgagees, their] exs, ads, or assigns, shall at any time thereafter, upon the request and at the cost of the sd, *mortgagors*, or their respive hrs, exs, ads, or assigns, reconvey the sd premes to them according to their respive rights and interests therein, or as they shall direct.

XIII. PROVD, &c., that if the sd, *mortgagor*, his hrs, exs, ads, or assigns, shall on the — day of — next, pay to the sd, *mortgagees*, their exs, ads, or assigns, [the sd firm of Z. & Co.] the sd sum of £—, &c., then the sd, *mortgagees*, their exs, ads, or assigns, shall at any time thereafter, &c.

XIV. PROVD, &c., that if the sd, *mortgagors*, or their respive hrs, exs, ads, or assigns, [or the sd firm of Z. & Co.] shall on demand, or without any demand being made, pay to the sd, *mortgagees*, their exs, ads, or assigns, [Banking Co., or their assigns] or to one of the cashiers at the sd bank, the balance which shall for the time being be owing as hinbefore mentd, psuant to the covenant hinbefore contd, then the sd,

mortgagees, their exs, ads, or assigns [Banking Co., or their assigns] shall at any time thereafter, upon the request and at the cost of the sd, *mortgagors*, or their respive hrs, exs, ads, or assigns, reconvey the sd premes hinbefore assured to them, or as they shall direct.

Proviso for
cesser in
mortgage
of free-
holds by
demise.

xv. PROVID, &c., that if the sd, *mortgagor*, his hrs, exs, ads, or assigns, or any pson or psons interested in the equity of redemption of the sd premes hinbefore demised, shall, &c., as in form 1., then and in such case the sd term of years hby created, shall absolutely cease and determine.

Short form
of proviso
for redemp-
tion to
follow the
habendum.

xvi. SUBJT to redemption on payment on the — day of — next, to the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, of the sd sum of £— and interest, psuant to the covenant of the sd, *mortgagor*, hinbefore contd.

POWERS OF SALE (a).

I.

FREEHOLDS or COPYHOLDS. *Variations where the mortgage is SUBJECT to PRIOR CHARGES.*

The power
to sell and
convey.

AND IT IS HBY agrd that it shall be lawful for the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, at

Power of
sale in the
Conv. Act,
1881.

(a) By the Conv. Act, 1881, s. 71, the provisions of Lord Cranworth's Act, 23 & 24 Vict. c. 145, giving powers to mortgagees are repealed, and by ss. 19, *et seq.*, other provisions more conformable to the ordinary forms of powers, and more advantageous, are substituted. By s. 19 (1), a mortgagee, where the mortgage is made by deed, has to the like extent as if the power had been conferred by the mortgage deed, but not further, (among other powers) a power, when the mortgage money has become due, to sell or concur with any other person in selling the mortgaged property, or any part thereof, either subject to prior charges or not, with the usual provisions as to the mode of sale, &c.; (by s. 21) to convey to the purchaser; and (by s. 22) to give receipts for the purchase-money.

Provisions

By s. 20 the power is not to be exercised unless and until (i.), notice

any time or times after the sd — day of — next, the day appointed for payment, without any further consent of

requiring payment of the mortgage money has been served on the mortgagor as to events (which by s. 2 (vi.) includes any person deriving title under him, or entitled in which to redeem the mortgage), or one of several mortgagors, and default has been power exercisable. made in payment of the mortgage-money, or part thereof, for three months (i.e., calendar months) after such service, (and see the full and protective provisions in s. 67 as to the mode of giving the notice), or, (ii.) some interest under the mortgage is in arrear and unpaid for two months after becoming due, or, (iii.) there has been a breach of some provision contained in the mortgage or the Act, and on the part of the mortgagor or some person concurring in the mortgage to be observed or performed, other than the covenant for payment; but s. 21 (2), provides for the protection of the purchaser in case of a sale which is unauthorised or without proper notice, or otherwise irregular (which would protect a *bona fide* purchaser without notice, even if the security has been satisfied, see *Dicker v. Angerstein*, 3 Ch. D. 600, but not if he knows of the irregularity, see *Parkinson v. Hanbury*, 1 Dr. & Sm. 143, 2 De G. J. & S. 450, L. R. 2 E. & Ir. Ap. 1), the person damnified having his remedy in damages against the mortgagee. As to the third event in which the statutory power of sale is made exercisable, it is to be remarked that there does not appear to be any provision in the Act which is "to be observed or performed by the mortgagor;" these words were probably meant to refer to the provisions as to fire insurance in ss. 19 & 23, but those provisions only give powers to the mortgagee, and if it is intended that the power of sale shall be exercisable in case the insurance is not kept up by the mortgagor, a covenant to insure must be inserted in the deed; see *infra*, p. 44.

Sett. 21 (3) provides for the application of the purchase-money after dis- Other charge of prior incumbrances to which the sale is not made subject, or after provisions. payment into Court under the Act (s. 5, see vol. i., p. 455, note), of a sum to meet any prior incumbrances, in payment of the costs of the sale or any attempted sale, and of the mortgage money, interest, and costs, and payment of the residue to the person or persons entitled to the mortgaged property, or authorised to give receipts for the proceeds of sale. By s. 21 (4) the power may be exercised by any person entitled to receive and give a discharge for the mortgage money; by s. 21 (5), it is not to affect the right of foreclosure; by s. 21 (6) the mortgagee is protected from involuntary losses, and by s. 21 (7), he is empowered, after the power of sale has become exercisable, to recover from any person any of the title deeds which would have been recoverable by a purchaser under the power of sale (which is a modification of s. 16 of the repealed Act).

The power of sale and other powers of the mortgagee and the powers relating Statutory thereto may be varied or extended by the mortgage deed; and are to apply power may only if and as far as a contrary intention is not therein expressed (s. 19 be varied. (2, 3)).

The powers of the repealed Act applied to mortgages of real and leasehold To what property only, but the new Act applies to mortgages of any property real or mortgages

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Proviso for
cesser in
mortgage
of free-
holds by
demise.

Short form
of proviso
for redemp-
tion to
follow the
habendum



private contract, and subjt to any special or other stipulations or condons as to title or evidence of title or otherwise which may be deemed proper, with power to buy in at any sale by auction, and to rescind or vary any contract for sale, and to re-sell the premes which shall have been so bought in, or as to which the contract for sale shall have been rescinded without being responsible for any loss occasioned thby (b) and for the pposes afsd to execute and do all such assurances and things as [he or] they shall think fit (c): *PROVD ALWAYS*, and it is hby agrd that the sd, *mortgagee*, his [*mortgagees*, their] *exs, ads, or assigns*, shall not exercise the power of sale hinbefore contd, unless and until default shall have been made in paymt of some moneys intended to be hby secured, and [he or] they shall have given a notice in writing to the sd, *mortgagor*, his *hrs, exs, ads, or assigns*, or some or one of them, to pay off the

Events in which power is to be exercised.

tives which might make it necessary for the mortgagee to pay the money into of real and Court under the Trustee Relief Act. In the ordinary power of sale this is *personal estate* provided for (though not in a very satisfactory manner), by making the whole of the surplus payable to the personal representatives as personal estate, and if thought desirable, the statutory provisions may be so modified.

The statutory power of sale is adapted for use and may doubtless be safely Use of relied on in ordinary cases (except for property situate abroad); and may be varied or extended if need be; but in important transactions, or where any considerable modifications in the statutory power would be required, it may be better to insert an express power. If the mortgage is not intended to carry a power of sale, the Act must be expressly excluded. *statutory power of sale.*

(b) If the mortgage is subject to prior charges, add here, "and to make any such sale as afsd, either subjt to the sd prior mtge or charge of the — day of —, [*or*, subjt to any prior charges or incumbrances affecting the premes sold or any pt thof,] whether binding on the pson or psons exercising this power or not, or any pt thof, or discharged thfrom, and in the latter case either upon the terms of the same, or any pt thof, being discharged or provd for out of the pchase-money or by paymt into Court or otherwise."

(c) By the Conv. Act, 1881, s. 30, a mortgage estate of inheritance or *pur autre vie* vests in the personal representatives of the mortgagee, so that the provision that the heir of the mortgagee shall concur in a sale by the personal representatives to convey the legal estate is now unnecessary.

moneys for the time being owing on this security, or left a notice in writing to that effect at or upon some pt of the sd mtged premes, and default shall have been made in paymt of such moneys or pt thof for *six* calendar months from the time of giving or leaving such notice, or unless and until some interest owing on this security shall be in arrear for *three* calendar months, [or unless and until default shall have been made in the performance or observance of some covenant or provon herein contd, and on the pt of the sd, *mortgagor*, his hrs, exs, ads, or assigns, to be performed or observed, other than the covenant for paymt of the sd principal moneys and interest], and any such notice as afsd shall be sufficient although not addressed to any pson by name or description, and although any pson or psons affected thby may be unborn, unascertained, or under disability (d): PROVD ALSO, and it is hby decl'd that, upon any sale purporting to be made in psuance of the afsd power in that behalf, the pchaser or pchasers shall not be bound to see or inquire whether either of the cases mentd in the provo lastly hinbefore contd has happened, or whether any default has been made in paymt of any moneys intd to be hby secured, or whether any money remains owing on this security, or as to the necessity or expediency of the condons subj't to which the sale is made, or otherwise as to the regularity of the sale, or be affected by express notice of any irregularity whatsoever therein, and notwithstanding any such irregularity such sale shall, as far as regards the safety and protection of the pchaser or pchasers, be deemed to be within the afsd power in that behalf, and be valid and effectual accordingly, and the remedy of the sd, *mortgagor*, his hrs or assigns, in respect of any breach of the provo lastly hinbefore contd, or of any irregularity in such sale shall be in damages only: AND IT IS HBY (e) agrd

Proviso for
protection
of pur-
chasers.

Receipt

(d) See the Conv. Act, 1881, s. 67, as to notices, and p. 31, forms VI. and VII.
(e) The statutory power to give receipts in 22 & 23 Vict. c. 35, s. 23, and the Conv. Act, 1881, s. 22, would no doubt suffice, but where an express power of sale is inserted it is usual to include the power to give receipts.

that upon any such sale as aforesaid the deed of the said, *mortgagee*, his [mortgagees, their] executors, administrators, or assigns, for the purchase-money (f) shall effectually discharge the purchaser or purchasers therefrom, and from being concerned to see to the application thereof or being answerable for the loss or misapplication thereof:

clause for purchase-money.

AND IT IS HEREBY further agreed that the said, *mortgagee*, his [mortgagees, their] executors, administrators, or assigns, shall hold the moneys to arise from any such sale as aforesaid (f) upon trust in the first place, by and out of the same to reimburse [himself or] themselves or to pay all costs and expenses incurred in or about such sale or otherwise in respect of the premises: And in the next place, to apply such moneys in or towards satisfaction of the moneys for the time being owing on this security, and then to pay the surplus (if any) of the said purchase-moneys unto the said, *mortgagor*, his heirs or assigns: AND IT IS HEREBY further decided that the aforesaid power of sale may be exercised by any person or persons who shall for the time being be entitled to receive and give a discharge for the moneys owing on this security.

Trusts of purchase-money.

Power may be exercised by any person entitled to mortgage-money.

II.

LEASEHOLDS *mortgaged by* ASSIGNMENT. VARIATIONS for a mortgage by UNDERLEASE (a).

AND IT IS HEREBY agreed that it shall be lawful, &c., as in form I., p. 22, to the end of the first clause containing the power to sell and convey: PROVIDED ALWAYS, and it is hereby decided that the said, *mortgagee*, his [mortgagees, their] executors, administrators, or assigns, shall not exercise the power of sale hereinbefore contained unless and until default shall have been made in

The power to sell and convey.

Events in which power is to be exercised.

(f) If the mortgage is subject to prior charges, add, "or such part thereof as shall be paid to [him or] them."

(a) For the variations where the mortgage is subject to prior charges, see the notes to form I.

paymt of some monies intd to be hby secured, and [he or] they shall have given a notice in writing to the sd, *mortgagor*, his exs, ads, or assigns, or some or one of them, to pay off the moneys for the time being owing on this security, or left a notice in writing, &c., *remainder of this clause and subsequent clauses as in mortgage of freeholds, form I., pp. 26-7, except that for the words, "hrs or assigns," of the mortgagor, the words, "exs, ads, or assigns," will be substituted throughout.*

III.

PERSONALTY. VARIATIONS *for* POLICY of ASSURANCE (a).

The power
to sell and
convey.

AND IT IS HBY agrd that it shall be lawful for the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, at any time or times after the sd — day of — next, without any further consent of the sd, *mortgagor*, his exs, ads, or assigns, to sell the sd premes hby mtged, or any of them, or any pt or pts thof, either togr or separately or in pcels, and either by public auction or private contract [and as to any policy of assurance, either by way of surrender to the office or otherwise], and subjt to any special or other stipulations, &c., *remainder of the first clause giving power to sell and convey, form I., p. 25: PROV'D ALWAYS*, and it is hby decl'd that the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, shall not exercise the power of sale hinbefore contd unless and until default shall have been made in paymt of some moneys intd to be hby secured, and [he or] they shall have given a notice in writing to the sd, *mortgagor*, his exs, ads, or assigns, or some or one of them, to pay off the moneys for the time being owing on this secy, or left a notice in writing to that effect [or sent such notice by

Events in
which
power is to
be exer-
cised.

(a) For the variations where the mortgage is subject to prior charges, see the notes to form I.

post in a registered letter addressed to him or them] at his or their or some or one of their usual or last-known place or places of abode or business in England (b), and default shall have been made in paymt of such moneys, or some pt thof, &c., *remainder of this clause and subsequent clauses as in mortgage of freeholds*, pp. 26-7, *except that for the mortgagor's "hrs or assigns," his, "exs, ads, or assigns," will be substituted throughout.*

IV.

FREEHOLDS, LEASEHOLDS, COPYHOLDS, and PERSONALTY.

VARIATIONS for POLICY of ASSURANCE. (a)

AND IT IS HBY agrd that it shall be lawful for the sd, *mortgagee*, his [*mortgagees*, their] exs, ads or assigns, at any time or times after the sd — day of — next, without any further consent of the sd, *mortgagor*, his hrs, exs, ads, or assigns, to sell the sd premes hby mtged, or any of them, or any pt or pts thof resply, either togr or in pcels or separately and either by public auction or private contract, [and as to any policy of assurance either by way of surrender to the office or otherwise], and subjt to any special or other stipulations, &c., *remainder of the first clause containing the power to sell and convey, form I., p. 25* : PROVD ALWAYS and it is hby further agrd that the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, shall not exercise the power of sale hinbefore contd unless and until default shall have been made in paymt of some moneys intd to be hby secured, and [he or] they shall have given a notice in writing to the sd, *mortgagor*, his hrs, exs, ads, or assigns, or some or one of them, to pay off the moneys for the time being owing on

The power to sell and convey.

Events in which power is to be exercised.

(b) See the Conv. Act, 1881, s. 67, and p. 31, form VI.

(a) For variations where there are prior charges, see the notes to form I.

this secy, or left a notice in writing to that effect [or sent such notice by post in a registered letter addressed to him or them] at his or their or some or one of their usual or last known place or places of abode or business in England, or at or upon some pt of the sd mtged premes, and default, &c., *remainder of this clause and proviso for protection of purchasers, as in form I., p. 26, except that for the mortgagor's "hrs or assigns," his, "hrs, exs, ads, or assigns," will be substituted. Remaining clauses as in form I., except that the trust of the surplus purchase moneys will be for the mortgagor, his, "exs, ads, or assigns, as personal este."*

V.

SHORT Form for any kind of PROPERTY. (a)

The power
to sell.

AND IT IS HBY agrd that it shall be lawful for the mtgee [s], at any time or times after the sd — day of — next, without any further consent of the mtgor to sell the sd mtged premes, or any pt thof, either togr or in peels or separately, and either by public auction or private contract, [and in the case of any policy of assurance, either by surrender to the office or otherwise], and subjt to any stipulations as to title or otherwise, and with power to buy in at any sale by auction, and to rescind or vary any contract for sale, and to re-sell without being responsible for loss, and to enter into, execute, and do any agreemts, assurances, or acts for the pposes afsd: Provd THAT the sd power of sale shall not be exercised unless default shall have been made in paymt of some moneys hby secured, and the mtgee [s] shall have given a notice in writing to the mtgor, to pay

Events in
which
power is
to be exer-
cised.

(a) This form is adapted to a case in which the interpretation clause, p. 63, is used; but in general, where brevity is desired, the power will no doubt be omitted in reliance on the statute.

off the moneys owing on this secy, or left such a notice at his usual or last known place of abode [or upon the sd mtged premes], and default shall be made in paymt of such moneys, or pt thof, for *six* calendar months from the giving or leaving such notice, or unless some interest due under this secy shall be in arrear for *three* calendar months: **PROVD ALSO** Proviso for protection of purchasers. that no pchaser shall be concerned to enquire whether the last preceding clause has been complied with, or whether any money remains owing on this secy, or otherwise as to the regularity of the sale, which, so far as regards the safety and protection of the pchaser, shall be valid notwithstanding any want of compliance with the last preceding clause or other irregularity: **AND IT IS HBY** further decld that the mtgee [s] shall out of the pchase-moneys upon any such sale pay all the costs incurred by him [them] in or about the sale or otherwise in respect of the premes, and in the next place apply the same in or towards satisfon of the moneys owing on this secy and then pay the surplus (if any) to the mtgor. Application of purchase-money.

VI. PROVD ALWAYS and it is hby agrd that the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, shall not exercise the power of sale vested in [him or] them by virtue of these presents and the statute in that behalf unless and until, &c., *insert express provisions, see p. 25*, but the agreemt lastly hinbefore contd shall not affect the provons contd in the sd statute for the protection of pchasers. Clause modifying statutory power of sale.

VII. AND IT IS HBY AGRD that the power of sale conferred on mtgees by the Conveyancing and Law of Property Act, 1881, shall apply to this secy, but without the restrictions therein contd as to giving notice or otherwise, and so that for the ppose of a sale of the sd premes hby mtged or any pt thof under such statutory power, the whole of the principal money hby secured shall notwithstanding anything herein contd be deemed to become due immediately on the execution of these presents. Clause extending statutory power of sale.

VIII. PROVD ALWAYS and it is hby agrd that for the ppose Proviso that mort-

gage money shall be deemed to become due on a specified day for the purpose of a sale. of any sale of the sd premes hby mtged or any pt thof under the power of sale vested in the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, and assigns, by virtue of these presents and the statute in that behalf, the whole of the principal money hby secured shall be deemed to become due on the — day of —.

Declaration in a mortgage of real and personal estate that surplus sale moneys are to be personalty (b). IX. PROVD ALWAYS and it is hby agrd that any surplus remaining of the moneys received on a sale of all or any of the sd premes hby mtged under the power of sale vested in the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, and assigns, by virtue of these presents and the statute in that behalf, after paymt of all principal moneys, interest, and costs hby secured, shall be paid to the sd, *mortgagor*, his exs, ads, or assigns, as psonal estate.

Declaration excluding statutory power of sale. X. PROVD ALWAYS and it is hby agrd that the power of sale conferred on mtgees by the Conveyancing and Law of Property Act, 1881, shall not apply to this secy.

Proviso in transfer keeping alive power of sale in original mortgage (c). XI. PROVD ALWAYS, &c., that nothing herein contd shall affect or prevent the exercise of the power of sale contd in [conferred on the sd, *mortgagee*, his exs, ads, and assigns, by] the sd indre of mtge of the — day of — [and the statute in that behalf].

Declaration that surplus proceeds of sale by first mortgage shall be paid to second mortgagee (d). XII. PROVD ALWAYS and the sd, *mortgagor*, doth hby declare that if on a sale of all or any pt of the sd mtged premes under the power of sale contd in, or, "conferred by," the sd indre of mtge of the — day of —, the *first mortgage*, or in an action thereunder, there shall remain a surplus after the discharge of all moneys secured by such mtge, such surplus shall be paid to the sd, *second mortgagee*, his exs, ads, or assigns, whose receipt shall be an effectual discharge for the same, whether any moneys shall remain due on the secy of these presents or

(b) See p. 24, note.

(c) See 2 Dav. Prec., pt. 2, p. 270; *Boyd v. Patric*, L. R., 7 Ch. Ap. 385.

(d) This is probably covered by the Conv. Act, 1881, s. 22, but it may be better to insert an express clause, see 2 Dav. Prec., pt. 2, p. 448.

not, and shall be applied by him or them as if the same had been monies received on a sale of the sd mtged premes under the power of sale vested in the sd, *second mortgagee*, his exs, ads, and assigns, by virtue of these presents [and the statute in that behalf].

XIII. PROVID ALWAYS and it is hby agrd that the provons of the 67th section of the Conveyancing and Law of Property Act, 1881, with respect to notices required or authorized by that Act to be served on mtgors, shall apply to any notices required or authorized by or under these presents to be served on or given to the sd, *mortgagor*, his hrs, exs, ads, or assigns, or any of them.

Addition to power of sale referring to the Conv. Act, 1881, s. 67, as to notices (c).

MISCELLANEOUS CLAUSES.

I. AND THE sd, *mortgagor*, doth hby declare that until such surrender shall be made, he the sd, *mortgagor*, his hrs and assigns, shall stand seised of the sd premes hinbefore covenanted to be surrendered in trust for the sd, *mortgagee*, his, [*mortgagees*, their] hrs and assigns, subjt to such equity of redemption as the same premes would have been subjt to if such surrender had been made, AND doth hby irrevocably appoint the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, and assigns, and every of them the attorney and attorneys of him the sd, *mortgagor*, in his name and on his behalf at any time to surrender the same premes psuant to the covenant hinbefore contd, and to execute and do all instrumts and acts necessary or proper for that ppose.

Declaration of trust of copyholds till surrender (a).

Power of attorney to surrender (b).

(c) This clause may be added to the express power of sale in lieu of the usual provisions as to notices, the statutory provisions being very full and sufficient in this respect.

(a) See p. 24, note.

(b) See the Conv. Act, 1882, s. 8, enabling a power of attorney given for valuable consideration to be made irrevocable in favour of a purchaser (including a mortgagee, see s. 1); but it must be *expressed* to be irrevocable. The power, it is conceived, notwithstanding the Act, can only be made available against the mortgagor personally, and not against his heirs or assigns, so as to displace any intermediate dealing or devolution; but there may be a question as to this. Of course an immediate surrender ought, if possible, to be taken.

By Conv. Act, 1882, powers of attorney can be made irrevocable.

Declaration
of trust of
nominal
reversion
in mort-
gage of
leaseholds
by demise.
Variations
for several
leases.

Power of
attorney to
assign the
reversion.

Provision
for reduc-
tion of
interest on
punctual
payment.

II. AND THE sd, *mortgagor*, doth hby declare that he the sd, *mortgagor*, his exs, ads, and assigns, shall henceforth stand possessed of the nominal reversion[s] hby reserved of the sd term of — years [several terms for which the sd respive premes hinbefore demised are respily held under the sd respive leases], in trust for the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, subjt to such equity of redemption as may for the time being be subsisting by virtue of these presents, AND doth hby irrevocably (c) appoint the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, and every of them, the attorney and attorneys of him the sd, *mortgagor*, in his name and on his behalf at any time to assign the same nominal reversion[s] to the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, or as [he or] they shall think fit, subjt to the equity of redemption, if any, for the time being subsisting as afsd, and to execute and do all deeds, instrumts and acts necessary or proper for that ppose.

III. PROVD ALWAYS and it is hby agrd that if the sd, *mortgagor*, his hrs, exs, ads, or assigns, shall on every half-yearly [quarterly] day on which the interest is hinbefore made payable under this secy or within *twenty-one* days after each of such days respily, pay to the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, interest for the principal sum [or sums] for the time being owing to [him or] them on this secy at the rate of —, *the reduced rate*, per cent. per annum, [(d) and if the sd, *mortgagor*, his hrs, exs, ads, and assigns, shall at all times perform and observe all the covenants and agreemts herein contd, and on his or their pt to be performed or observed, other than the covenants for paymt of the principal monies and interest hby secured], then and in such case the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, shall accept interest for the

(c) See note (b), preceding page.

(d) The words in this bracket will be omitted if the proviso, form VIII., is inserted.

principal sum [or sums] for the time being owing as afsd at the rate of —, *the reduced rate*, per cent. per annum, in lieu of —, *the higher rate*, per cent. per annum, for every half [quarter of a] year for which such interest shall be paid to [him or] them within such *twenty-one* days as afsd.

IV. PROVD ALWAYS, and it is hby agrd that if the sd, *mort-* Proviso for continu-
gagor, his hrs, exs, ads, or assigns, shall, on every half-yearly ance of
 [quarterly] day on which the interest is hinbefore made loan for a
 payable under this secy until the — day of —, or term cer-
 within *twenty-one* days after each of such days respby, pay, tain (c).
&c., as in last form, saying, “at the rate afsd,” or, if
 there is a proviso for reduction of interest on punctual pay-
 ment, “at the rate of —, *the reduced rate*, per cent. per
 annum,” [and if the sd, *mortgagor*, his hrs, exs, ads, and
 assigns, shall perform and observe, &c., as in last form],
 then the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or
 assigns, shall not, before the sd — day of —, call in
 the sd principal sum of £—, [or any other monies for the
 time being owing on this secy], or any pt thof.

V. PROVD ALWAYS, and it is hby agrd that the sd, *mort-* Proviso
gagor, his hrs, exs, ads, or assigns, shall not require the that mort-
 sd, *mortgagee*, his [*mortgagees*, their], exs, ads, or assigns, gagor shall
 to receive the sd sum of £— [or any further principal not be at
 sum or sums which may be advanced by or become owing liberty to
 to [him or] them under this secy], or any pt thof, before pay off for
 the sd — day of —. a term
certain.

VI. PROVD ALWAYS, and it is hby agrd that if the sd, *mort-* Proviso for
gagor, his hrs, exs, ads, or assigns, shall pay to the sd, payment
mortgagee, his [*mortgagees*, their] exs, ads, or assigns, the by instal-
 sd sum of £—, *the principal*, with interest for the same ments (f).
 at the rate afsd to be computed from the date of these
 presents by the instalmts at the times and in the mner

(c) If the powers of sale and appointing a receiver, in the Conv. Act, 1881, s. 19, are intended to apply in this case, the clause in p. 31, form VIII., should be added; see p. 24, note.

(f) See p. 13, note (a), and the last note.

hinafter mentd, that is to say, the sd principal sum of £—— by —— equal [half] yearly paymts of £—— each, whof the first is to be paid on the —— day of —— next and a subsequent instalmt is to be paid on every —— day of —— [and —— day of ——], and the interest on the principal sum for the time being unpaid by half-yearly paymts on the —— day of —— and the —— day of ——, whof the first is to be made on the —— day of —— next, or, as to each such paymt of principal and interest, shall make the same within *twenty-one* days after the day so appointed for the paymt thof resply [and if the sd, *mortgagor*, his hrs, exs, ads, and assigns, shall at all times perform, &c., *as in form III.*], then the sd, *mortgagee*, his [*mortgagees*, their], exs, ads, or assigns, shall accept paymt of the sd sum of £——, *the principal*, and the interest thereon by the instalmts at the times and in mner afsd.

Power to
mortgagor
to antici-
pate the in-
stalments.

VII. PROVD ALWAYS, that the sd, *mortgagor*, his hrs, exs, ads, or assigns, shall be at liberty at any time or times, upon giving at least one calendar month's notice in writing of his or their intention so to do, to pay off all or any pt of the principal monies for the time being owing on this secy, so that not less than £—— be so paid off at any one time, and that upon any paymt of principal the interest on the whole principal sum for the time being owing be fully paid [and that such partial paymt by anticipation shall not interfere with the paymt in regular course of the instalmts of principal subsequently payable psuant to the provon hinbefore in that behalf contd, but shall only have the effect of accelerating the ultimate paymt of the monies remaining owing on this secy].

General
proviso for
cessor of
certain pro-
visions in
favour of
mortgagor
in case of
his non-
perform-

VIII. PROVD ALWAYS, and it is hby agrd that in case the sd, *mortgagor*, his hrs, exs, ads, or assigns, shall fail or neglect to perform or observe any of the covenants herein contd [or hby implied], and on his and their part to be performed and observed (other than and besides the covenants for paymt of the principal monies and interest hby secured), or in case the sd, *mortgagee*, his [*mortgagees*, their] exs, ads,

or assigns shall enter into possession or receipt of the rents ^{ance of his} and profits of the *sd* mortgaged premises, or any part thereof ^{covenants} (g), then and in any such case the provisos ^{or mort-} *hinbefore* continued for ^{gages} reduction of interest on punctual payment, for the continuance ^{taking pos-} of the *sd* loan for the term *hinbefore* mentioned, and for payment ^{session (f).} of the principal monies hereby secured by instalments, shall cease to operate.

IX. PROVIDE ALWAYS, &c., that in case any proceedings or ^{Proviso for} steps shall be taken by or on behalf of the person or persons ^{cessor of} interested under the *sd* indenture of mortgage of the — day of ^{certain} — ^{provisions} [or, interested in any of the *sd* prior charges or incumbrances], or any of such persons, for exercising and enforcing ^{in favour} any powers or remedies for recovering payment of any monies ^{of mort-} secured by the *sd* indenture of mortgage [or, recoverable in respect ^{gagor} of any of the *sd* prior charges or incumbrances], against ^{where} or upon the *sd* premises hereby mortgaged or any part thereof, then ^{there are} and in such case the provisos *hinbefore* continued, &c., ^{prior in-} *as in* ^{cum-} *last form.* ^{brances.}

X. PROVIDE, &c., that if and so often as any interest due ^{Proviso} under the covenant *hinbefore* continued or this present proviso ^{capitalizing} shall be in arrear for *twenty-one* days after the day hereby ^{interest in} appointed for the payment thereof, such interest shall be treated ^{arrear.} as an accretion to the capital monies hereby secured as on the day on which the same ought to have been paid, and shall thenceforth bear interest payable at the rate and on the days aforesaid, and this section shall extend to such capitalized interest in all respects.

XI. AND THE *sd*, mortgagee, doth, [mortgagees, do] hereby ^{Covenant} covenant with the *sd*, mortgagor, that the *sd*, mortgagee, his ^{by mort-} [mortgagees, their] executors, administrators, or assigns, will from time to time ^{gages to} [subject as *hinafter* mentioned] advance to the *sd*, mortgagor, his executors ^{make} or administrators, such further sum or sums of money as he or they may ^{advances} *gagor.* ^{to mort-}

(f) See also the next form.

(g) The provision for reduction of interest would cease on the mortgagor entering into possession without express provision: *Union Bank of London v. Ingram*, 16 Ch. D. 53.

Variations
where the
advances
are made
for building
purposes.

from time to time require, not exceeding in the whole with the sd sum of £—— now advanced the sum of £——, by monthly instalmts, one such instalmt to be payable on the —— day of each calendar month, and the first of such instalmts to be pd on the —— day of —— next [and no such instalmt to exceed four-fifths of the prime cost of the works executed by the sd, *mortgagor*, his exs or ads, during the then preceding calendar month according to the value of the same, as computed by Mr. ——, or failing him by Mr. ——; AND IT IS HBY AGRD that the reasble costs of the sd surveyor shall be borne by the sd, *mortgagor*, his hrs, exs, or ads, and may be deducted from the sd advances hinbefore covenanted to be made to the sd, *mortgagor*, his exs or ads;] PROVD ALWAYS, that in case the sd, *mortgagor*, or the pson or psons for the time being entled to the benefit of the covenant hinbefore contd for making the sd advances shall become bankrupt or enter into liquidation for the benefit of or make any arrangemt or composition with his or their creditors, or shall have any pt of his or their este taken in execution [or shall not make such progress with the sd buildings and works as will enable them to be completed within the time and in the mnner hinbefore provd], or in case the sd, *mortgagor*, his exs or ads, shall assign or part with the benefit of this present covenant, then and in any of such cases, the obligation of the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, to make or continue such advances as afsd shall cease; PROVD ALSO, and it is hby agrd that this secy shall extend to all sums which may be advanced by the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns to or on account of the sd, *mortgagor*, his exs, ads, or assigns, although the obligation to make or continue the sd advances may have ceased.

Declaration
that sums
advanced
by different
mortgagees
are to be
rateably
secured.

XII. PROVD ALWAYS, and it is hby agrd that the sd sums of £—— and £——, and the interest thereon resp'y shall have no preference or priority the one over the other, but shall be payable rateably and equally out of any monies which shall be received, recovered, or realised by the sd,

mortgagees, or their respive exs, ads, or assigns, or any of them, under or by virtue of these presents, whether on a sale of the sd mtged premes or by action on any of the covenants hinbefore contd or otherwise.

XIII. PROVD ALWAYS, and it is hby agrd and decl'd between and by the sd, *mortgagees or transferees*, that the sd sum of £—— so paid by them as afsd was [and that any further sum or sums which may be hereafter advanced or paid by them or the survors of them on the secy of these presents will be] money belonging to them on a joint account [and accordingly that the sd, *mortgagees or transferees*, and the survors or survivor of them, and the exs or ads of such survivor, their or his assigns, shall be entled to the principal sum [or sums] and interest hby secured, or, in a transfer, say, "hby assigned," and their or his rect shall be an effectual discharge for the same and every pt thof resply].

XIV. PROVD ALWAYS, and it is hby agrd that as between the sd, *principal*, his hrs, exs, and ads, on the one pt; and the sd, *surety*, his hrs, exs, and ads, and the sd mtged premes, on the other pt, the sd, *principal*, his hrs, exs, and ads, shall be primarily liable to the paymt of the monies intd to be hby secured.

XV. PROVD ALWAYS, and it is hby agrd that as between the sd, *principal*, his hrs, exs, and ads, and the sd mtged premes, on the one pt, and the sd, *surety*, his hrs, exs, and ads, on the other pt, the sd, *principal*, his hrs, exs, and ads, and the sd mtged premes, shall be primarily liable to the paymt of the monies intd to be hby secured.

XVI. PROVD ALSO, and it is hby agrd and decl'd that the provon hinbefore contd with respect to the primary liability to the paymt of the monies hby secured shall not affect the

Declaration that money belongs to mortgagees or transferees on a joint account.

Variation for further advances (A).

Proviso as to primary liability between principal and surety where the mortgaged property belongs to the surety.

The same where the mortgaged property belongs to the principal, and the surety covenants for payment.

Proviso that mort-

(A) By the effect of the Conv. Act, 1881, ss. 60, 61 (see p. 9, note), the statement that the advance is made or intended to be made on a joint account, is sufficient to make the right to the mortgage money survive, and the part in brackets at the end of the form is superfluous. The clause may be omitted altogether if the fact that the advance is on joint account appears elsewhere in the deed, except the part relating to further advances.

gagee is not to be affected by declaration as to primary incidence of debt as between principal and surety.

Proviso that surety shall be liable as a principal debtor (i).

Power of attorney in assignment of debt or chose in action (k).

Receipt clause in

Insertion of power of attorney in mortgage of chose in action.

person or persons for the time being entitled to the same monies, or so much thereof as shall remain unpaid, or in anywise preclude him, them, or any of them, from enforcing or having recourse to all or any remedies or means for recovering payment thereof which may be available under these presents or otherwise at such times and in such order and manner as he or they shall think fit.

XVII. PROVIDED ALWAYS, and it is hereby agreed that, although as between the sd, *principal debtor*, and the sd, *surety*, the sd, *surety*, is only a surety for the sd, *principal*, yet as between the sd, *surety*, and the sd, *mortgagee* [s], the sd, *surety*, shall be considered as a principal debtor for all the principal monies and interest intended to be hereby secured, so that the sd, *surety*, his heirs, executors, or assigns, shall not be released by time being given to the sd, *principal*, his heirs, executors, or assigns, or by any other variation in the provisions of these presents, or any other thing whatsoever whereby the sd, *surety*, his heirs, executors, or assigns, as a surety or sureties only, would have been so released.

XVIII. AND THE sd, *assignor*, doth hereby irrevocably empower the sd, *assignee*, his [assignees, their] executors, assigns, to demand, sue for, recover, receive, and give valid receipts for the sd sum of £——, the *principal*, and all interest [due and] to become due for the same, in the name or names of the sd, *assignor*, his executors or assigns, and for the purposes aforesaid, or any of them, to execute and do all such instruments and things as shall be deemed necessary or expedient.

XIX. PROVIDED ALWAYS, that the receipt of the sd, *mortgagee*,

(i) As to the doctrine to which this clause has reference, see Dav. Prec., vol. ii., pt. 2, p. 502, note, and the notes to *Rees v. Berrington*, 2 Wh. & Tu., L. C. Eq.

(k) As sec. 25, clause 6, of the Judicature Act, 1873, 36 & 37 Vict. c. 66, making a chose in action assignable, does not apply to assignments by way of mortgage, the insertion of a power of attorney in mortgages of legal choses in action is still necessary (see *National Provincial Bank of England v. Harle*, 6 Q. B. D. 626; Dav. Prec., vol. ii., pt. 2, p. 726, note), except in the case of policies of assurance, as to which see the Policies of Assurance Act, 1867, 30 & 31 Vict. c. 144. A power of attorney given for valuable consideration may be made irrevocable under the Conv. Act, 1882, s. 8; see p. 33, note (b).

his [*mortgagees*, their] exs, ads, or assigns, for any monies mortgage of policy or other chose in action, or reversionary interest (1).
 [stocks, funds, shares, or secs, or other personal este] paid [or transferred] to [him or] them in respect of the sd policy [policies], or, "the sd — and premes hby mtged," shall effectually discharge the assurance society, or, "trees or tree," or psons or pson paying [or transferring] the same thfrom, and from being concerned to see to the application or being answerable for the loss or misapplication thof, and that the assurance society, or, "trees or tree," or psons or pson, paying [or transferring] the same, shall not be bound or concerned to inquire whether any default has been made in paymt of any principal monies or interest intd to be hby secured, or whether any money remains owing on this secy, or otherwise as to the propriety of such paymt [or transfer] as afsd.

XX. AND IT IS HBY AGRD, that if the sd, *mortgagee*, his Trusts of monies received in respect of policy or other chose in action or reversionary interest (1).
 [*mortgagees*, their] exs, ads, or assigns, shall receive any monies [or any stocks, funds, shares, or secs, or other personal este], in respect of the sd policy [policies], or, "the sd — and premes liby mtged," [he or] they shall, by and out of the same [or the proceeds of the sale of the sd stocks, funds, shares, or securities, which [he or] they are hby authorized to effect] in the first place reimburse [himself or] themselves, or pay or discharge all costs and expenses

(1) The Conv. Act, 1881, s. 22, makes the receipt of a mortgagee a sufficient Power for mortgagee to give receipts, &c., under Conv. Act. 1881.
 discharge for any money or securities (including stocks, funds, and shares, see s. 2, xiv.) comprised in or arising under his mortgage, and the person or corporation transferring the same is not concerned to enquire whether any money remains due under the mortgage; and the money received under the mortgage or from the proceeds of the securities (after payment of the costs of recovering and receiving and converting the same) is applicable in the same manner as the proceeds of a sale under the statutory power in s. 19. The power of selling securities received by the mortgagee under his mortgage is not expressly given by s. 22, being left to depend on the general power of sale in s. 19, as to which see p. 22, note. These statutory provisions, unless it is desired in any way to vary them, appear to cover everything contained in clauses xix. and xx. in the text, which may therefore in general be omitted. Where the loan is to continue for a term of years some provision may be required for the event of a policy or reversion falling in before the expiration of the term.

incurred in obtaining the paymt [or transfer] of and receiving [and converting] the same, or in or about the execution of the trusts or powers of these presents or otherwise in relation to the premes: And in the next place pay or apply such monies in or towards satisfson of the monies for the time being owing on the secy of these presents, and then pay the surplus (if any) thof unto the sd, *mortgagor*, his exs, ads, or assigns.

Covenant
to keep up
life policy
or policies.

XXI. AND THE sd, *mortgagor*, doth hby covenant with the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, and assigns, that he the sd, *mortgagor*, will not do or suffer anything whby the sd policy [policies] of assurance hby mtged [or any of them] may become void or voidable, or the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, may be prevented from receiving any of the monies to become payable thereunder or any pt thof, and that if the sd [any such] policy has or shall become voidable, he the sd, *mortgagor*, will immediately thereupon at his own cost do all things necessary for restoring or keeping on foot the same:

To renew.

AND THAT if the sd [any such] policy, or any new policy or policies to be effected as hinafter is mentd, has or shall become void, the sd, *mortgagor*, will immediately thereupon at his own cost effect or enable the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, to effect a new policy or policies on his life in [his or] their name or names, in such sum or sums as would have been payable under the policy or policies which shall have become void if the sd, *mortgagor*, had died: AND

New poli-
cies to be
subject to
security.

THAT every such substituted policy and the monies to become payable under the same shall be subjt to this secy, and the [power of sale, trusts, and] provons herein contd in relation to the sd original policy [policies] and the monies to become payable thereunder: AND FURTHER THAT he the sd, *mortgagor*, will during the continuance of this secy duly and punctually pay the annual premium or premiums and other sum or sums of money (if any) necessary for keeping on foot the sd original policy [policies], and any substituted or policies, and will forthwith deliver the rect for such paymt to the sd, *mortgagee*, his, [*mortgagees*,

To pay
premiums.

their] exs, ads, or assigns : AND THAT if the sd, *mortgagor*, shall at any time neglect or refuse to make the paymts afsd, or any of them, it shall be lawful for the sd, *mortgagee*, his, [mortgagees, their] exs, ads, or assigns, to pay the same : AND THAT all monies and expenses which shall be paid or incurred by [him or] them in keeping on foot the sd original policy [policies], or in effecting or keeping on foot any such substituted policy or policies as afsd or otherwise in relation to the premes, with interest for the same at the rate of — per cent. per annum from the time or respive times of the same having been paid or expended, shall be repaid to [him or] them by the sd, *mortgagor*, his hrs, exs, or ads, on demand : AND until repaymt shall be charged upon the sd original policy [policies], and any substituted policy or policies, and the monies to become payable thereunder resply [and the sd other premes hby mtged].

Power to mortgagee to pay premiums on mortgagor's default.

That the same shall be repaid by mortgagor,

and in the meantime be a charge on mortgaged property.

XXII. AND THE mtgor doth hby covenant with the mtgee [s], that he the mtgor will not do or suffer anything whby the sd policy may become void or voidable : And if the same shall become void, will immediately, at his own cost, effect a new policy on his life, in the name[s] of the mtgee[s] for the sum of £—— at the least, or enable him [them] so to do : And that every such substituted policy, and the monies to become payable thereunder, shall be subjt to this secy and to all the powers and provons herein contd in relation to the sd original policy and the monies to become payable thereunder : And that the mtgor will pay all premiums and monies necessary for keeping on foot the sd original or any substituted policy on the first day on which the same ought to be paid, and will forthwith produce the rect for every such paymt to the mtgee[s], and that in default of his so doing, the mtgee[s] may make such paymts, and that all sums paid by him [them] for that ppose, or for effecting any new policy with interest for the same at the rate of — per cent. per annum shall be repaid by the mtgor on demand, and in the meantime shall be a charge on the sd policy [and other premes hby mtged.]

The same. Short form.

MORTGAGES.

COVENANT
TO INSURE
PROPERTY
BY DEED
AGAINST FIRE
AND THUNDER
AND LIGHTNING
AND TO INDEMNIFY
THE MORTGAGEE
IN CASE OF LOSS
BY FIRE OR
THUNDER AND
LIGHTNING
AND TO PAY
THE COSTS OF
INSURANCE
AND TO INDEMNIFY
THE MORTGAGEE
IN CASE OF LOSS
BY FIRE OR
THUNDER AND
LIGHTNING

XXIII. ART THE sd. mortgagor, doth hereby covenant with the sd. mortgagee, his [mortgagees, their] exs, ads, and assigns, that he the sd. mortgagor, his hrs, exs, ads, or assigns, will during the continuance of the present secy keep the sd messuages, buildings [plant, machinery, furniture, effects] and premises comprd in or subjt to this secy, and all messuages, buildings, and ppty which may from time to time be so comprd or subjt [in good and substantial repair and in good and perfect working order] insured against loss or damage by fire (n)

...the Act in this ... where the mortgage is by deed, a ... against fire any building, effects, ... in the mortgage, and to add the ... interest at the same rate. By ... by the mortgagee is not to ... or if no amount is specified is ... the property; and 2. he is not to ... in the mortgage that no in- ... kept up by the mortgagor in ... mortgage contains no stipulation ... the amount in which the mort- ... By s 21 3 the money received ... in the mortgage or the Act, is, if the ... the loss or damage; but ... to the contrary ... money to be applied in dis- ... by s 19 2 3, be varied, ... the previous law, Dav.

... does not apply unless the mortgage ... in some points of ... sufficiently protective to the ... but as the Act only gives the ... of the mortgagor, and does ... the policy or ... be in a difficulty ... and the statutory ... where the lease contains a ... in addition to those in ... See the next form. ... is under covenant to insure, ... in accordance

in the sum of £—— at the least, *or*, “to the full value thof,” *or*, “in not less than *three-fourths* of the value thof,” [in the — insurance co, *or*] in some insurance office of repute, to be approved of in writing from time to time by the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, [in the [name *or*] names of the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, *or*, “in the joint names of the sd, *mortgagor*, his hrs, &c., and the sd, *mortgagee*, his, &c.”], (o) and will duly and punctually pay all premiums and monies necessary for effecting and keeping up the sd insurance, on the first day on which the same ought to be paid, and will on demand produce to the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, the policy or policies of such insurance, and the rect for every such paymt: AND THAT if default shall at any time be made by the sd, *mortgagor*, his hrs, exs, ads, or assigns, in effecting or keeping up such insurance as afsd, [or in keeping the sd premes or any pt thof in good and substantial repair, *add in case of machinery*, “and in perfect working order”], it shall be lawful for the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, to insure and keep insured the sd premes or any pt thof in any sum not exceeding £—— [or (as the case

with the covenants of the sd indre of lease,” adding the covenant to produce the policy and receipts, and making consequential alterations in the rest of the form.

(o) If so intended insert here, instead of the subsequent covenant to produce the policy:—

“AND WILL immediately after every such policy shall have been effected, or after the execution of these presents, if the same shall have been previously effected, deposit the sd policy with the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns;” and in lieu of the covenant to produce the receipts for the premiums, say, “AND WILL forthwith deliver the rect for every such paymt to the sd, *mortgagee*, &c.”; and the power of the mortgagee to insure on default should extend to a default, “in depositing any such policy or delivering any such rect as afsd.”

Variations
where
policy de-
posited
with mort-
gagee.

may require), to repair and keep in repair the same, *for machinery, add*, "and put the same into perfect working order," and to enter upon the sd mtged premes for that ppose]: AND THAT all monies expended by [him or] them for such ppose, togr with interest thereon at the rate of—— per cent. per annum from the time of the same having been expended, shall on demand be repaid to [him or] them by the sd, *mortgagor*, his hrs, exs, ads, or assigns, and until such repaymt shall be a charge upon all the sd premes hby mtged: [AND THAT all monies which may be received by virtue of any such policy shall be applied in making good the loss or damage, *or*, "and that all monies received by virtue of any such policy in respect of the destruction or damage by fire of any houses or buildings thby insured shall be applied in making good the loss or damage, and any monies received in respect of the destruction or damage by fire of any ppty other than houses or buildings shall either be applied in making good the loss or damage, or if so required, by notice in writing given by the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, to the sd, *mortgagor*, his hrs, exs, ads, or assigns, or left on the sd mtged premes, within—— days after the occurrence of such loss or damage, shall be applied in or towards the discharge of the monies owing on this secy (p)."]

Provisions
as to in-
surance
supple-
mental to
the statu-
tory
power (q).

XXIV. AND THE sd, *mortgagor*, doth hby, &c., *covenant to insure to the end of the covenant to produce receipts as in last form*: AND that if the sd, *mortgagor*, his hrs, exs, ads, or assigns, shall at any time refuse or neglect to produce any such policy or rect to the sd, *mortgagee*, his, [*mortgagees*,

(p) The part in this bracket may generally be omitted; see the Conv. Act, 1881, s. 23 (3, 4), above, p. 44, note, which alters to some extent the previous law; see as to buildings, *Ex parte Gorely*, 4 De G. J. & S. 477; and as to chattels, *Lees v. Whiteley*, L. R. 2 Eq. 148; Dav. Prec., vol. ii., pt. 2, pp. 57, *et seq.* The provision giving the mortgagee the option of applying the insurance monies in discharge of the mortgage is exceptional; *id.* p. 367, note.¹

(q) See p. 44, note (m).

their] exs, ads, or assigns, on demand [he or] they shall be entitled to assume that the sd premes are not insured in accordance with the covenant hinbefore contd, and to exercise the powers conferred by statute in that behalf.

XXV. AND THE sd, *mortgagor*, doth hby covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, that ^{Covenant for renewal of lease.} he the sd, *mortgagor*, his exs, ads, or assigns, will from time to time during the continuance of this present secy, at his or their own cost, procure the present lease, [*add, if the lease contains a covenant for perpetual renewal*, “and any renewed lease or leases which may hereafter be obtained ”] of the sd leasehd premes hby mtged, to be renewed psuant to the covenant in that behalf contd in the sd present lease [or to be contd in any future lease of the sd premes]; the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, doing or concurring in all such acts as may be necessary or proper for obtaining such renewals: AND that the sd, *mortgagor*, his exs, ads, or assigns, will immediately after obtaining [every] such renewed lease, assign the same and the premes therein comprd to the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, subjt to such equity of redemption as shall then be subsisting by virtue of these presents, and in the meantime will stand possessed of the renewed lease in trust for the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, for securing the monies intended to be hby secured: AND FURTHER that if the sd, *mortgagor*, his exs, ads, or assigns, shall refuse or neglect to renew the sd [any such] lease, and to pay the fines, fees, and costs attending the renewal thof, it shall be lawful for the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, to obtain such renewal in [his or] their own [name or] names, or otherwise; And that all monies expended by [him or] them in or about any such renewal, with interest thereon at the rate of — per cent. per annum from the time or respive times of the expenditure thof, shall be repaid to [him or] them by the sd, *mortgagor*, his hrs, exs, ads, or assigns, on demand, and in the meantime shall be a charge

may require), to repair and
*machinery, add, "and put it in
 order," and to enter upon the same
 purpose]: AND THAT all monies received
 for such purpose, together with interest
 per cent. per annum from the date
 expended, shall on demand be paid
 the sd, mortgagor, his heirs, assigns,
 such repayment shall be made
 mortgaged: [AND THAT in the
 virtue of any such mortgage,
 the loss or damages sustained by
 virtue of any such mortgage,
 damage by fire or other cause,
 be applied in the first place to
 monies received by the mortgagee
 fire of any property mortgaged,
 be applied in the first place to
 required, by the mortgagee,
 his, [mortgagor, his heirs, assigns,
 premises, with interest thereon,
 damage, shall be paid to the
 monies due to the mortgagee.*

Provisions
 as to in-
 surance
 suppl-
 mental
 the
 to

XXIV.
 insur-

to demise the whole or any part thereof, which [he or] they shall have for any term of years not exceeding three years, in possession or within six calendar months of the lease, upon such terms and conditions as may be deemed expedient [(c) so as there be reserved the best yearly rent or rents to be received in reversion that can be reasonably obtained in the nature of a fine or premium, and in every such lease a condition of reversion within a reasonable time to be therein reserved for rents thereby reserved]: And the said mortgagor, with the said mortgagee, his, heirs, assigns, and assigns, that he the said mortgagor leaseholds, exs, ads,] or assigns, will and lawfully shall, if any, of every such lease to [himself] after the execution thereof by the lessee or

... if voidable leases are granted, as they frequently would be, and he is willing (as would generally be the case) he would be in a less favourable position as regards endowments, covenants, &c., than if the leases had been validly granted.

But where the property comprises an important building desirable to give special powers, superseding or supplemental powers, see note (d), *infra*. Exception has been taken to the

Act as to reserving a peppercorn-rent during the first 5 years lease; this is an ordinary power, and can scarcely prejudice but if desired it may be restricted. Sometimes the mortgagee

give leasing powers to the mortgagor personally, but not to permit him to lease under him; the statutory powers may be readily confined in this way by a short clause. There does not appear to be anything in the law which prevents its applying to copyholds, subject to the custom of the manor, or to leaseholds, subject to the restrictions of the superior lease (see

As to leases of property in mortgage, see Vol. I., p. 802, note.

The form may be shortened by substituting "at rack rent" for the words in this bracket. It is not considered necessary that it should be made a condition of the validity of the lease that the lessee should execute a

asionally, where the mortgage comprises house property or a
a, desirable to insert fuller powers of leasing, entering into
leases, accepting surrenders of leases, laying out roads, &c., and

gagee is not to be affected by declaration as to primary incidence of debt as between principal and surety.

Proviso that surety shall be liable as a principal debtor (i).

Power of attorney in assignment of debt or chose in action (k).

Receipt clause in

Insertion of power of attorney in mortgage of chose in action.

person or persons for the time being entitled to the same monies, or so much thereof as shall remain unpaid, or in anywise preclude him, them, or any of them, from enforcing or having recourse to all or any remedies or means for recovering payment thereof which may be available under these presents or otherwise at such times and in such order and manner as he or they shall think fit.

XVII. PROVIDED ALWAYS, and it is hereby agreed that, although as between the sd, *principal debtor*, and the sd, *surety*, the sd, *surety*, is only a surety for the sd, *principal*, yet as between the sd, *surety*, and the sd, *mortgagee* [s], the sd, *surety*, shall be considered as a principal debtor for all the principal monies and interest intended to be hereby secured, so that the sd, *surety*, his heirs, executors, or administrators, shall not be released by time being given to the sd, *principal*, his heirs, executors, or administrators, or by any other variation in the provisions of these presents, or any other thing whatsoever whereby the sd, *surety*, his heirs, executors, or administrators, as a surety or sureties only, would have been so released.

XVIII. AND THE sd, *assignor*, doth hereby irrevocably empower the sd, *assignee*, his [assignees, their] executors, administrators, and assigns, to demand, sue for, recover, receive, and give valid receipts for the sd sum of £—, the *principal*, and all interest [due and] to become due for the same, in the name or names of the sd, *assignor*, his executors or administrators, and for the purposes aforesaid, or any of them, to execute and do all such instruments and things as shall be deemed necessary or expedient.

XIX. PROVIDED ALWAYS, that the receipt of the sd, *mortgagee*,

(i) As to the doctrine to which this clause has reference, see *Dav. Prec.*, vol. ii., pt. 2, p. 502, note, and the notes to *Rees v. Berrington*, 2 Wh. & T., L. C. Eq.

(k) As sec. 25, clause 6, of the Judicature Act, 1873, 36 & 37 Vict. c. 66, making a chose in action assignable, does not apply to assignments by way of mortgage, the insertion of a power of attorney in mortgages of legal choses in action is still necessary (see *National Provincial Bank of England v. Harle*, 6 Q. B. D. 626; *Dav. Prec.*, vol. ii., pt. 2, p. 726, note), except in the case of policies of assurance, as to which see the Policies of Assurance Act, 1867, 30 & 31 Vict. c. 144. A power of attorney given for valuable consideration may be made irrevocable under the Conv. Act, 1882, s. 8; see p. 33, note (b).

his [*mortgagees*, their] exs, ads, or assigns, for any monies mortgage of policy or other chose in action, or reversionary interest (*l*).
 [stocks, funds, shares, or secs, or other personal este] paid
 [or transferred] to [him or] them in respect of the sd policy
 [policies], or, "the sd — and premes hby mtged," shall
 effectually discharge the assurance society, or, "trees or
 tree," or psons or pson paying [or transferring] the same
 thfrom, and from being concerned to see to the application
 or being answerable for the loss or misapplication thof, and
 that the assurance society, or, "trees or tree," or psons or
 pson, paying [or transferring] the same, shall not be bound
 or concerned to inquire whether any default has been made
 in paymt of any principal monies or interest intd to be
 hby secured, or whether any money remains owing on this
 secy, or otherwise as to the propriety of such paymt [or
 transfer] as afsd.

XX. AND IT IS HBY AGRD, that if the sd, *mortgagee*, his Trusts of monies received in respect of policy or other chose in action or reversionary interest (*l*).
 [*mortgagees*, their] exs, ads, or assigns, shall receive any
 monies [or any stocks, funds, shares, or secs, or other
 personal este], in respect of the sd policy [policies], or, "the
 sd — and premes hby mtged," [he or] they shall, by and
 out of the same [or the proceeds of the sale of the sd stocks,
 funds, shares, or securities, which [he or] they are hby
 authorized to effect] in the first place reimburse [himself or]
 themselves, or pay or discharge all costs and expenses

(*l*) The Conv. Act, 1881, s. 22, makes the receipt of a mortgagee a sufficient Power for mortgagee to give receipts, &c., under Conv. Act. 1881.
 discharge for any money or securities (including stocks, funds, and shares, see s. 2, xiv.) comprised in or arising under his mortgage, and the person or corporation transferring the same is not concerned to enquire whether any money remains due under the mortgage; and the money received under the mortgage or from the proceeds of the securities (after payment of the costs of recovering and receiving and converting the same) is applicable in the same manner as the proceeds of a sale under the statutory power in s. 19. The power of selling securities received by the mortgagee under his mortgage is not expressly given by s. 22, being left to depend on the general power of sale in s. 19, as to which see p. 22, note. These statutory provisions, unless it is desired in any way to vary them, appear to cover everything contained in clauses xix. and xx. in the text, which may therefore in general be omitted. Where the loan is to continue for a term of years some provision may be required for the event of a policy or reversion falling in before the expiration of the term.

incurred in obtaining the paymt [or transfer] of and receiving [and converting] the same, or in or about the execution of the trusts or powers of these presents or otherwise in relation to the premes: And in the next place pay or apply such monies in or towards satisfson of the monies for the time being owing on the secy of these presents, and then pay the surplus (if any) thof unto the sd, *mortgagor*, his exs, ads, or assigns.

Covenant
to keep up
life policy
or policies.

XXI. AND THE sd, *mortgagor*, doth hby covenant with the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, and assigns, that he the sd, *mortgagor*, will not do or suffer anything whby the sd policy [policies] of assurance hby mtged [or any of them] may become void or voidable, or the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, may be prevented from receiving any of the monies to become payable thereunder or any pt thof, and that if the sd [any such] policy has or shall become voidable, he the sd, *mortgagor*, will immediately thereupon at his own cost do all things necessary for restoring or keeping on foot the same :

To renew.

AND THAT if the sd [any such] policy, or any new policy or policies to be effected as hinafter is mentd, has or shall become void, the sd, *mortgagor*, will immediately thereupon at his own cost effect or enable the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, to effect a new policy or policies on his life in [his or] their name or names, in such sum or sums as would have been payable under the policy or policies which shall have become void if the sd, *mortgagor*, had died: AND THAT every such substituted policy and the monies to become payable under the same shall be subjt to this secy, and the [power of sale, trusts, and] provons herein contd in relation to the sd original policy [policies] and the monies to become payable thereunder: AND FURTHER THAT he the sd, *mortgagor*, will during the continuance of this secy duly and punctually pay the annual premium or premiums and other sum or sums of money (if any) necessary for keeping on foot the sd original policy [policies], and any substituted policy or policies, and will forthwith deliver the rect for every such paymt to the sd, *mortgagee*, his, [*mortgagees*,

New poli-
cies to be
subject to
security.

To pay
premiums.

their] exs, ads, or assigns : AND THAT if the sd, *mortgagor*, shall at any time neglect or refuse to make the paymts afsd, or any of them, it shall be lawful for the sd, *mortgagee*, his, [mortgagees, their] exs, ads, or assigns, to pay the same : AND THAT all monies and expenses which shall be paid or incurred by [him or] them in keeping on foot the sd original policy [policies], or in effecting or keeping on foot any such substituted policy or policies as afsd or otherwise in relation to the premes, with interest for the same at the rate of — per cent. per annum from the time or respive times of the same having been paid or expended, shall be repaid to [him or] them by the sd, *mortgagor*, his hrs, exs, or ads, on demand : AND until repaymt shall be charged upon the sd original policy [policies], and any substituted policy or policies, and the monies to become payable thereunder resply [and the sd other premes hby mtged].

Power to mortgagee to pay premiums on mortgagor's default.

That the same shall be repaid by mortgagor,

and in the meantime be a charge on mortgaged property.

XXII. AND THE mtgor doth hby covenant with the mtgee [s], that he the mtgor will not do or suffer anything whby the sd policy may become void or voidable : And if the same shall become void, will immediately, at his own cost, effect a new policy on his life, in the name[s] of the mtgee[s] for the sum of £—— at the least, or enable him [them] so to do : And that every such substituted policy, and the monies to become payable thereunder, shall be subjt to this secy and to all the powers and provons herein contd in relation to the sd original policy and the monies to become payable thereunder : And that the mtgor will pay all premiums and monies necessary for keeping on foot the sd original or any substituted policy on the first day on which the same ought to be paid, and will forthwith produce the rect for every such paymt to the mtgee[s], and that in default of his so doing, the mtgee[s] may make such paymts, and that all sums paid by him [them] for that ppose, or for effecting any new policy with interest for the same at the rate of — per cent. per annum shall be repaid by the mtgor on demand, and in the meantime shall be a charge on the sd policy [and other premes hby mtged.]

The same. Short form.

Covenant by mortgagor to insure against fire, and power to mortgagee to insure on default. Variations where the covenant extends to repairs(m).

XXIII. AND THE sd, *mortgagor*, doth hby covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, that he the sd, *mortgagor*, his hrs, exs, ads, or assigns, will during the continuance of the present secy keep the sd messuages, buildings [plant, machinery, furniture, effects], and premes comprd in or subjt to this secy, and all messuages, buildings, and ppty which may from time to time be so comprd or subjt [in good and substantial repair, *add in case of machinery*, "and in perfect working order," and also] insured against loss or damage by fire (n)

Provisions of the Conv. Act, 1881, as to insurance.

(m) The Conv. Act, 1881, s. 19 (superseding Lord Cranworth's Act in this respect, see p. 1, note), gives to a mortgagee, where the mortgage is by deed, a power at any time to insure and keep insured against fire any building, effects, or property of an insurable nature comprised in the mortgage, and to add the premiums to the mortgage debt, so as to carry interest at the same rate. By s. 23 (1) the amount of an insurance so effected by the mortgagee is not to exceed the amount specified in the mortgage, or if no amount is specified is not to exceed two-thirds of the value of the property; and (2) he is not to effect an insurance where there is a declaration in the mortgage that no insurance is required, or where an insurance is kept up by the mortgagor in accordance with the mortgage, or where the mortgage contains no stipulation as to insurance, and the mortgagor insures to the amount in which the mortgagee is authorised by the Act to insure. By s. 23 (3) the money received on an insurance, whether effected under the mortgage or the Act, is, if the mortgagee so requires, to be applied in making good the loss or damage; but (4) the mortgagee may (without prejudice to any obligation to the contrary imposed by law or special contract) require the money to be applied in discharge of the mortgage. These provisions may, by s. 19 (2, 3), be varied, or extended, or excluded by the mortgage. See as to the previous law, Dav. Prec., vol. ii., pt. 2, pp. 54, *et seq.*

Remarks on the statutory power.

It should be borne in mind that the Act does not apply unless the mortgage is by deed. The statutory provisions, though less full in some points of detail than the clause in the text, appear to be sufficiently protective to the mortgagee to be relied on in ordinary cases; but as the Act only gives the mortgagee power to insure in case of the default of the mortgagor, and does not imply any covenant by the mortgagor to insure or produce the policy or receipts for the premiums, the mortgagee may occasionally be in a difficulty for want of knowledge whether there has been a default, and the statutory power would generally not fit the case of leaseholds where the lease contains a covenant to insure; express provisions in lieu of or in addition to those in the statute will therefore sometimes be required. See the next form.

Variations for leaseholds.

(n) In the case of leaseholds, where the lessee is under covenant to insure, it will generally be sufficient to substitute for what follows, "in accordance

in the sum of £—— at the least, or, “to the full value thof,” or, “in not less than *three-fourths* of the value thof,” [in the — insurance co, or] in some insurance office of repute, to be approved of in writing from time to time by the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, [in the [name or] names of the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, or, “in the joint names of the sd, *mortgagor*, his hrs, &c., and the sd, *mortgagee*, his, &c.”], (o) and will duly and punctually pay all premiums and monies necessary for effecting and keeping up the sd insurance, on the first day on which the same ought to be paid, and will on demand produce to the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, the policy or policies of such insurance, and the rect for every such paymt : AND THAT if default shall at any time be made by the sd, *mortgagor*, his hrs, exs, ads, or assigns, in effecting or keeping up such insurance as afsd, [or in keeping the sd premes or any pt thof in good and substantial repair, *add in case of machinery*, “and in perfect working order”], it shall be lawful for the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, to insure and keep insured the sd premes or any pt thof in any sum not exceeding £—— [or (as the case

with the covenants of the sd indre of lease,” adding the covenant to produce the policy and receipts, and making consequential alterations in the rest of the form.

(o) If so intended insert here, instead of the subsequent covenant to produce the policy :—

“AND WILL immediately after every such policy shall have been effected, or after the execution of these presents, if the same shall have been previously effected, deposit the sd policy with the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns ;” and in lieu of the covenant to produce the receipts for the premiums, say, “AND WILL forthwith deliver the rect for every such paymt to the sd, *mortgagee*, &c.” ; and the power of the mortgagee to insure on default should extend to a default, “in depositing any such policy or delivering any such rect as afsd.”

Variations
where
policy de-
posited
with mort-
gagee.

may require), to repair and keep in repair the same, *for machinery, add*, "and put the same into perfect working order," and to enter upon the sd mtged premes for that ppose]: AND THAT all monies expended by [him or] them for such ppose, togr with interest thereon at the rate of — per cent. per annum from the time of the same having been expended, shall on demand be repaid to [him or] them by the sd, *mortgagor*, his hrs, exs, ads, or assigns, and until such repaymt shall be a charge upon all the sd premes hby mtged: [AND THAT all monies which may be received by virtue of any such policy shall be applied in making good the loss or damage, *or*, "and that all monies received by virtue of any such policy in respect of the destruction or damage by fire of any houses or buildings thby insured shall be applied in making good the loss or damage, and any monies received in respect of the destruction or damage by fire of any ppty other than houses or buildings shall either be applied in making good the loss or damage, or if so required, by notice in writing given by the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, to the sd, *mortgagor*, his hrs, exs, ads, or assigns, or left on the sd mtged premes, within — days after the occurrence of such loss or damage, shall be applied in or towards the discharge of the monies owing on this secy (p)."]

Provisions
as to in-
surance
supple-
mental to
the statu-
tory
power (q).

XXIV. AND THE sd, *mortgagor*, doth hby, &c., *covenant to insure to the end of the covenant to produce receipts as in last form*: AND that if the sd, *mortgagor*, his hrs, exs, ads, or assigns, shall at any time refuse or neglect to produce any such policy or rect to the sd, *mortgagee*, his, [*mortgagees*,

(p) The part in this bracket may generally be omitted; see the Conv. Act, 1881, s. 23 (3, 4), above, p. 44, note, which alters to some extent the previous law; see as to buildings, *Ex parte Gorely*, 4 De G. J. & S. 477; and as to chattels, *Lees v. Whiteley*, L. R. 2 Eq. 143; Dav. Prec., vol. ii., pt. 2, pp. 57, *et seq.* The provision giving the mortgagee the option of applying the insurance monies in discharge of the mortgage is exceptional; *id.* p. 367, note.²

(q) See p. 44, note (m).

their] exs, ads, or assigns, on demand [he or] they shall be entitled to assume that the sd premes are not insured in accordance with the covenant hinbefore contd, and to exercise the powers conferred by statute in that behalf.

XXV. AND THE sd, *mortgagor*, doth hby covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, that ^{Covenant for renewal of lease.} he the sd, *mortgagor*, his exs, ads, or assigns, will from time to time during the continuance of this present secy, at his or their own cost, procure the present lease, [*add, if the lease contains a covenant for perpetual renewal*, “and any renewed lease or leases which may hereafter be obtained ”] of the sd leasehd premes hby mtged, to be renewed psuant to the covenant in that behalf contd in the sd present lease [or to be contd in any future lease of the sd premes]; the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, doing or concurring in all such acts as may be necessary or proper for obtaining such renewals: AND that the sd, *mortgagor*, his exs, ads, or assigns, will immediately after obtaining [every] such renewed lease, assign the same and the premes therein comprd to the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, subjt to such equity of redemption as shall then be subsisting by virtue of these presents, and in the meantime will stand possessed of the renewed lease in trust for the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, for securing the monies intended to be hby secured: AND FURTHER that if the sd, *mortgagor*, his exs, ads, or assigns, shall refuse or neglect to renew the sd [any such] lease, and to pay the fines, fees, and costs attending the renewal thof, it shall be lawful for the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, to obtain such renewal in [his or] their own [name or] names, or otherwise; And that all monies expended by [him or] them in or about any such renewal, with interest thereon at the rate of — per cent. per annum from the time or respive times of the expenditure thof, shall be repaid to [him or] them by the sd, *mortgagor*, his hrs, exs, ads, or assigns, on demand, and in the meantime shall be a charge

upon the renewed lease and the ppty therein comprd [and the sd other premes hby mtged].

Power of leasing for twenty-one years to be exercised by mortgagor till mortgagee enters into possession and afterwards by mortgagee (b).

XXVI. PROVID ALWAYS, and it is hby agrd that it shall be lawful for the sd, *mortgagor*, his heirs [for leaseholds, exs, ads], and assigns, from time to time to demise the whole or any pt or pts of the sd premes hby mtged, which shall not have been sold or entered into possession of by the sd, *mortgagee*, his, [mortgagees, their] exs, ads (a), or assigns, and the equity of redemption whof shall not have been foreclosed, and for the sd, *mortgagee*, his, [mortgagees, their] exs, ads (a),

(a) The word "heirs" is omitted here, since under s. 30 of the Conv. Act, 1881, the legal estate in the land goes to the personal representatives of the mortgagee, and all the powers should also be given to them.

Provisions of the Conv. Act, 1881, giving leasing powers to mortgagors and mortgagees.

(b) The Conv. Act, 1881, s. 18, gives to a mortgagor or mortgagee, while respectively in possession, power to grant agricultural or occupation leases for 21 years, and building leases for 99 years, at the best rent, without taking a fine and subject to the restrictions usually inserted in leasing powers; leases granted by a mortgagor in possession being binding on all the incumbancers, and those granted by a mortgagee in possession being binding on all prior incumbancers, and on the mortgagor and all persons interested in the equity of redemption (see subs. 1—9, and the definition of "mortgagor" in s. 2). In a building lease, a peppercorn rent, or a nominal or other rent less than the ultimate rent may be reserved for the first five years (subs. 10). The counterpart of a lease granted by the mortgagor is to be delivered by him to the first mortgagee within a month (subs. 11). The statutory power may be excluded or varied; or further or other leasing powers may be given by the mortgage, which are to be exerciseable (unless otherwise expressed) with the like incidents, etc., as if conferred by the Act (subs. 13, 14). The mortgagee when in possession would, of course, under s. 10 of the same Act, be entitled to the benefit of leases granted under the statutory power; and under s. 11 the obligation of the lessor's covenants having reference to the subject-matter of the lease would be annexed to the legal reversion, so far as the mortgagor has power to bind the reversion; which, however, he is not by s. 18 empowered to do, so as to impose on the mortgagee the obligation of any onerous covenant entered into by him.

Remarks on the Act.

These statutory powers of mortgagors are fuller in their details than the form in the text (besides extending to building leases), and appear to be adequate for ordinary purposes, and also sufficiently protective both to the mortgagor and mortgagee; and (though the practice of excluding them is believed to prevail to a considerable extent) it is conceived they may be safely left to operate, so far at any rate as regards the power to grant ordinary rack rent leases for 21 years, unless there is some special reason for their exclusion or limitation. In fact the exclusion of the statutory power without substituting an express power may be to the positive disadvantage of

or assigns, from time to time to demise the whole or any pt or pts of the sd mtged premes, which [he or] they shall have entered into possion of, for any term of years not exceeding twenty-one years, to take effect in possion or within six calendar months from the date of the lease, upon such terms and condons as may be deemed expedient [(c) so as there be reserved in every such lease the best yearly rent or rents to be incident to the reversion that can be reasbly obtained without taking anything in the nature of a fine or premium, and so as there be contd in every such lease a condon of re-entry for non-paymt, within a reasonable time to be therein specified, of the rent or rents thby reserved]: And the sd, *mortgagor*, hby covenants with the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, that he the sd, *mortgagor*, his hrs, [*for leaseholds*, exs, ads,] or assigns, will deliver the counterpart, if any, of every such lease to [him or] them forthwith after the execution thof by the lessee or lessees (d).

the mortgagee, since if voidable leases are granted, as they frequently would be, without his concurrence, and he is willing (as would generally be the case) to confirm them, he would be in a less favourable position as regards enforcing the lessee's covenants, &c., than if the leases had been validly granted under a power. But where the property comprises an important building estate, it may be desirable to give special powers, superseding or supplemental to the statutory powers, see note (d), *infra*. Exception has been taken to the provision in the Act as to reserving a peppercorn-rent during the first 5 years in a building lease; this is an ordinary power, and can scarcely prejudice the mortgagee; but if desired it may be restricted. Sometimes the mortgagee is willing to give leasing powers to the mortgagor personally, but not to persons claiming under him; the statutory powers may be readily confined in this respect by a short clause. There does not appear to be anything in the section to prevent its applying to copyholds, subject to the custom of the manor, or to leaseholds, subject to the restrictions of the superior lease (see suba. 15). As to leases of property in mortgage, see Vol. I., p. 802, note.

(c) The form may be shortened by substituting "at rack rent" for the words in this bracket. It is not considered necessary that it should be made a condition of the validity of the lease that the lessee should execute a counterpart.

(d) It is occasionally, where the mortgage comprises house property or a building estate, desirable to insert fuller powers of leasing, entering into contracts for leases, accepting surrenders of leases, laying out roads, &c., and

Clause restrictive of statutory powers of leasing.

XXVII. PROVD ALWAYS, and it is hby agrd that the sd, *mortgagor*, his hrs [*for leaseholds*, "exs, ads"] or assigns, shall not exercise the statutory powers of leasing vested in him or them by virtue of these presents without the consent in writing of the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns: PROVD also that no lessee or intending lessee shall be concerned to inquire whether such consent has been given, and that every lease or agreemt for a lease executed by the sd, *mortgagor*, his hrs [exs, ads] or assigns, shall as regards the safety and protection of the lessee or intending lessee be deemed to have been executed with such consent as afsd.

Power to mortgagee to grant leases (e).

XXVIII. PROVD ALWAYS, and it is hby agrd that it shall be lawful for the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, and assigns, at any time or times hereafter during the continuance of this secy, and whether [he or] they shall or shall not have entered into possion of the sd mtged premes, to demise all or any pt of the sd premes for any term of years, &c., *continue as in form XXVI., omitting the covenant at the end.*

management, which may be founded on the forms in SETTLEMENTS. The commencement of the powers may be in the form following :—

Special powers of leasing, &c.

"PROVD ALWAYS, and it is hby agrd that it shall be lawful for the sd, *mortgagor*, his hrs and assigns, at any time or times hereafter, before the sd, *mortgagee*, his [*mortgagees*, their] hrs, exs, ads, or assigns shall have either sold or entered into possion of the whole of the sd premes hby mtged, or have foreclosed the equity of redemption thof, to exercise over the whole or any pt thof which shall not have been sold or entered into possion of: And that it shall be lawful for the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, at any time or times hereafter during the continuance of this secy to exercise over the whole or any pt of the sd mtged premes which [he or] they shall have entered into possion of, the powers following, that is to say, First, a power, &c."

(e) See p. 48, note.

XXIX. PROVID ALWAYS, and it is hereby agreed that it shall be lawful for the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, at any time hereafter, whether there shall or shall not have been a default in the paymt of any principal monies or interest hereby secured, and although the same shall not have become due, to enter into the possession or rect of the rents and profits of the sd mtged premes, or any pt thof, and to manage the same, and to grant or enter into any such leases or agreements for leases thof as mtgees in possession are by the Conveyancing and Law of Property Act, 1881, authorised to grant or enter into, and to accept surrenders of leases and tenancies upon such terms as may be thought proper (g), and to make allowances to and arrangements with tenants, and to employ such agents or receivers to collect the rents of the sd premes, and at such salaries or commission as may be thought fit, and to expend such monies for repairs, insurance, or otherwise in relation to the mtged ppty as may be deemed expedient, and any monies so expended, with interest thereon at the rate of £5 per cent. per annum from the time of the expenditure thof, shall be repaid by the sd, *mortgagor*, his hrs, exs, or ads, to the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, on demand, and in the meantime shall be charged on all the sd premes hereby mtged: AND it is hereby further agreed that all rents and profits received by the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, shall be applied as far as the same will extend in the first place in paymt of all costs and expenses incurred by [him or] them in receiving or recovering the same or otherwise under this secy, and in the next place in discharge of any rents, rates, taxes, expenses of repairs, or insurance, or other outgoings affecting the sd mtged premes, and in the next place in paymt of the interest owing on this

Power to mortgagee to take immediate possession, and to manage, grant leases, &c. (f).

Trusts of rents and profits received.

(f) See p. 48, note.

(g) See also the power given by the Conv. Act, 1881, s. 19 (1), to mortgagees in possession to cut and sell timber; a provision appears to be wanting as to the application of the proceeds of sale, s. 21 (3) not being applicable, nor apparently s. 22 (2).

Provision
for pro-
tection of
mortgagee
in posses-
sion.

secy, and the surplus, if any, of such rents and profits may at the option of the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, be either applied in reduction of the principal monies owing on this secy, or may be deposited by [him or] them at interest in a bank, or may be paid to the sd, *mortgagor*, his hrs, exs, ads, or assigns: PROVD ALWAYS, and it is expressly agrd that the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, in the event of [his or] their entering into possion or rect of the rents and profits of the sd mtged premes or any pt thof as afsd, shall not under any circes be liable to account except for such monies as [he or] they shall actually receive nor for any involuntary losses incurred or occasioned by [him or] them.

Attorn-
ment by
mortgagor
in posses-
sion (h).

XXX. AND THIS INDRE ALSO WITNETH, that for the conson afsd the sd, *mortgagor*, doth hby attorn and become tenant from year to year to the sd, *mortgagee[s]* of such pt or pts of the sd premes hby mtged as are in the occupation of the sd,

As to
attornment
clause or
power of
distress for
interest.

Effect of
Bills of
Sale Acts.

(h) The practice, where the mortgagor is in the occupation of all or part of the mortgaged property, of inserting a power of distress for the interest, or a clause making him attorn tenant to the mortgagee at a rent equal to or exceeding the interest for the like purpose of giving a right of distress, must be discontinued or modified, as a clause in either form, if not altogether invalidated, is seriously affected by the Bills of Sale Acts, 1878 & 1882 (41 & 42 Vict. c. 31. 45 & 46 Vict. c. 43), even though the deed were registered, (except in the case of companies). By the first Act, s. 6, an attornment clause is to be deemed a bill of sale within the Act (unless the mortgagee is in possession, see *infra*); and although an express power of distress for the interest does not appear to be caught by that section, which applies only where a *rent* is reserved, it falls within the general definition of "bill of sale" in s. 4, which extends to authorities or licences to take possession of personal chattels as security for any debt. The Act of 1882 (s. 3), applies to all bills of sale (as defined by the principal Act) which are given as security for money. By s. 4, every bill of sale is to contain a schedule of the personal chattels comprised in it, and is to be void *except as against the grantor* as to any chattels not so described, and as to after-acquired chattels (see s. 5), other than chattels substituted for those originally comprised in it (see s. 6); by s. 8 every bill of sale is to be void, *even as against the grantor*, unless attested and registered according to the Acts; and by s. 9, every bill of sale given as security for the payment of money by the grantor is to be void, unless made in accordance with the form in the schedule to the Act. The last-mentioned clause creates great difficulty having regard to the definition of "bill of sale" in the principal Act, but if full effect is to be given to it, it would, of course, entirely defeat a power of distress or attornment clause; and a further objection is

mortgagor, at the yearly rent of £——, clear of all deductions, to be paid by equal half-yearly [quarterly] paymts on the

the necessity for registration in order to make such a clause effectual even against the mortgagor. But the Act of 1882 would apparently not apply to a mortgage by a company; see s. 17, and *infra*.

In this state of the law the insertion of either of the clauses in question is of very doubtful utility, even though the deed is registered, (except in the case of companies); and if it is desired to give a security upon the chattels on the property, it would be better to do so by a formal bill of sale, complying with the late Act, or else to give a warrant of attorney to enable the creditor to obtain speedy judgment and execution. The forms of the attornment clause and power of distress are here retained, as they may be of use in mortgages by companies and also as to property abroad. The following cases may be referred to in connection with the attornment clause—as to the amount of rent which might be reserved, *Ex parte Williams*, 7 Ch. D. 138; *Re Stockton, &c., Co.*, 10 Ch. D. 335; *Ex parte Jackson*, 14 Ch. D. 725; *Ex parte Punnett*, 16 Ch. D. 226; *Ex parte Voysey*, 21 Ch. D. 442 (which show that the rent may be in excess of the interest provided it is the fair value and not fictitious); as to applying the proceeds of a distress in discharge of principal, *Ex parte Harrison*, 18 Ch. D. 127.

As the Act of 1878, s. 6, expressly excludes from its operation the case where the mortgagee, being in possession, has demised the property to the mortgagor as his tenant at a fair and reasonable rent, it may be possible by putting the mortgagee in possession, and making the mortgagor his tenant at a fair rent, to give the mortgagee the additional remedy of distress for recovery of interest in arrear, and he might be protected from the responsibilities of a mortgagee in possession by an express clause, which would be binding on all persons claiming under the mortgagor with notice of the mortgage, which they must almost necessarily have. If this course is adopted, form XXIX. p. 51, should be inserted in the mortgage; and care should be taken to preserve evidence which would be available against third parties of the fact of the mortgagee having entered into possession before leasing to the mortgagor. There are dicta in some of the cases that the ordinary attornment clause operated *ipso facto* to make the mortgagee in possession, so as to render him liable to account to subsequent incumbrancers on that footing; see *In re Stockton, &c., Co.*, 10 Ch. D. 335; *Ex parte Jackson*, 14 Ch. D. 725. If these dicta are well founded, the plan which has been suggested seems to be open to no more objection than was the case with the old attornment clause.

It may be suggested for consideration whether it would be possible to secure to the mortgagee the right of distraining upon the property in the occupation of the mortgagor notwithstanding the Bills of Sale Acts by the device of making the mortgagor immediately before the mortgage grant a lease of the property to a nominee of the mortgagee determinable by either lessor or lessee at pleasure, at the fair rack rent, the mortgage being made subject to the lease, and the lessee afterwards sub-demising at the same rent to the mortgagor, who would thus remain in possession as sub-tenant to his own lessee. The details of such an arrangement would require care to avoid

Mode of
securing
remedy by
distress
under
present
law.

Another
suggested
device for
the same
purpose.

respective days hereinbefore appointed for the payment of the interest under this security, but so that such rent shall be applied in or towards satisfaction of such interest [and any surplus thereof in or towards satisfaction of the principal monies owing on this security]: PROVIDED ALWAYS, and it is hereby agreed that it shall be lawful for the said, mortgagee, his [mortgagees, their] executors, administrators, or assigns, at any time without giving any previous notice in that behalf, to enter into and upon and take possession of the said premises, whosoever the said, mortgagor, has attorned tenant as aforesaid, and to determine the tenancy created by such attornment: PROVIDED ALSO, and it is hereby agreed that neither the receipt of the said rent nor the tenancy created by the said attornment shall render the said, mortgagee, his [mortgagees, their] executors, administrators, or assigns liable to account as mortgagees in possession.

Power of
distress for
interest (i).

XXXI. AND THE SAID, mortgagor, doth hereby grant to the said, mortgagee, his [mortgagees, their] executors, administrators, and assigns, that in case the interest for the time being payable under this security, or any part thereof, shall at any time be in arrear and unpaid for — days after either of the days hereinbefore appointed for payment thereof, it shall be lawful for the said, mortgagee, his [mortgagees, their] executors, administrators, or assigns, into and upon the said mortgaged premises, or such part or parts thereof as are now or shall from time to time during the continuance of this security be in the occupation of the said, mortgagor, or any part thereof, to enter, and for the interest so in arrear and unpaid, and all costs and expenses incurred by the non-payment thereof (including the costs of distress) to distrain, and the distress and distresses then and there found to dispose of in due course of law, as landlords may do for rent reserved upon leases, to the intent that the said arrears of interest, costs, and expenses may thereby be satisfied.

Appoint-

XXXII. AND THIS INDRE ALSO WITNESSETH, that in consonance

difficulties, and it might possibly not be upheld in bankruptcy, but it would be valid as between the parties, and might be a means of effecting a security to a limited extent upon chattels in evasion of the Bills of Sale Acts.

(i) See p. 52, note.

of the premes the sd, *mortgagor*, with the concurrence of the sd, *mortgagee[s]* doth hby appoint the sd, *receiver*, to be receiver, agent, and attorney, from time to time, in the name of the sd, *mortgagor*, or otherwise to receive the rents and profits of the sd hereds hby mtged, [*if the appointment of the receiver is by a separate deed, say, "of the hereds mentd in the schedule hto"*], from the present and future tenants and occupiers thof and the psons liable to pay the same resply, and in case of the non-paymt thof to use all or any lawful remedies for recovering and obtaining paymt of the same, and to do all things necessary or proper for recovering and receiving the same as fully and effectually as the sd, *mortgagor*, could do: AND the sd, *mortgagor*, doth hby direct the present and future tenants and occupiers of the sd premes resply, and the psons liable to pay the same resply, to pay the rents and profits of the sd premes unto the sd, *receiver*, and to any future receiver to be appointed as is hinafter mentd: AND doth hby declare that the rect of the sd receiver for the time being shall be an effectual discharge to such tenants, occupiers, and psons for such rents and profits [AND doth hby authorise the sd receiver to make such allowances to and arrangemts with such tenants,

ment of re-
ceiver (k).

Direction
to tenants.

Receiver's
receipt to
be a dis-
charge.

Power to
make
allowances.

(k) By the Conv. Act, 1881, s. 19, a mortgagee, where the mortgage is made by deed, is empowered (to the like extent as if the power had been in terms conferred by the mortgage deed, but not further), when the mortgage money has become due, to appoint a receiver of the rents and profits or income of the mortgaged property (whether real or personal) or any part thereof; but by s. 24 (1), the appointment is not to be made until the mortgagee is entitled to exercise the power of sale *conferred by the Act*, a provision which renders the statutory power of appointing a receiver only available when the statutory power of sale is relied upon. This should be borne in mind. Section 24 (2—8) supplies the ordinary subsidiary provisions. This statutory power appears to be adequate and sufficient for ordinary cases, so as to supersede in general the necessity for providing for the appointment of a receiver in the mortgage or by a separate deed, provided the statutory power of sale is incorporated. The statutory provisions may be incorporated so as to apply to a case where, as in the form in the text, a specified person is agreed upon as receiver, see form XXXIII.

Statutory
power of
appointing
receivers.

A receiver is generally appointed by a separate deed, in order that it may be delivered to him if he is called upon to act.

Trusts of
rents re-
ceived.

occupiers, and other psons as he shall think fit]: AND IT IS
HBY AGD that the sd receiver shall by and out of the rents
and profits received by him in the first place pay all rates,
taxes, charges, assessmts, and outgoings for the time being
payable in respect of the sd premes, and which shall not be
otherwise paid, and the expense of repairing or insuring
against loss or damage by fire any buildings or other ppty
which he shall think fit to repair or insure, [*if there be any
prior charges, add,* and keep down the interest on all
principal monies, and the yearly sums, if any, for the time
being charged upon or payable out of the sd premes, or any
pt or pts thof, and having priority over the monies for the
time being due on the secy of these presents [the sd indre
of, &c], and which interest and yearly sums resply shall not
be otherwise paid, but so nevertheless as not to give the
same resply any further or other secy than they resply already
possess]; and in the next place deduct and retain for his
own use so much, not exceeding £5 for every £100 received,
as in the opinion of the sd, *mortgagee*, his [*mortgagees*, their]
exs, ads, or assigns, the sd receiver shall be reasbly entled
to for his trouble and expenses; and in the next place to
pay to the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or
assigns, by equal half-yearly [quarterly] paymts on the —
day of —, &c., the interest from time to time accruing
due on the secy of these presents [the sd indre of, &c.], and
pay the premiums or other monies payable for keeping on
foot any policy or policies of assurance for the time being
subjt to this [the sd] secy, with power to pay such premiums
or monies in priority if so required by the sd, *mortgagee*, his
[*mortgagees*, their] exs, ads, or assigns, to the sd interest,
and shall pay the surplus, if any, of the said rents and
profits unto the sd, *mortgagor*, his hrs, [*or if leaseholds*,
exs, ads], or assigns: PROVD ALWAYS, that the sd receiver
shall, if required by the sd, *mortgagee*, his [*mortgagees*, their]
exs, ads, or assigns, from time to time pay such surplus, or
any pt thof, into the — Bank, at —, or some other
bank to be approved of by [him or] them, as a fund to pro-

Receiver to
pay money
into bank.

vide for the interest then next accruing due to [him or] them, under this [the sd] secy, and any other paymts hinbefore authorised or required to be made which may become payable in the meantime other than the paymt to the sd, *mortgagor*, his hrs [or, exs, ads] or assigns, and shall also, if required as afsd, from time to time retain such a sum in the sd Bank as shall be deemed proper for the ppose of keeping the account open : AND THE sd, *receiver*, doth hby Covenant by receiver. covenant with the sd, *mortgagee*, his [mortgagees, their] exs, ads, and assigns, and also as a separate covenant with the sd, *mortgagor*, his hrs, [or if leaseholds, exs, ads], and assigns, that he the sd, *receiver*, will, so long as he shall be receiver of the sd rents and profits, use his utmost endeavours to collect and receive the same in mner afsd : AND THE sd, *mortgagor*, doth hby covenant with the sd, *mortgagee*, his Covenants by mortgagor that powers shall not be revocable without consent. [mortgagees, their] exs, ads, and assigns, that the powers and authorities hby given to the sd receiver for the time being shall not be revocable by the sd, *mortgagor*, without the consent of the sd, *mortgagee*, his [mortgagees, their] exs, ads, or assigns (1), and that he the sd, *mortgagor*, will not obstruct the sd receiver in recovering or receiving any of the sd rents and profits during the continuance of this [the afsd] secy : AND To concur in appointment of new receiver. FURTHER that in case the sd receiver for the time being shall die or be disqualified to receive the sd rents and profits, or shall refuse or neglect to perform the duties hby imposed on him, or shall misbehave himself whilst any monies shall remain owing on this [the afsd] secy, then and in any of such cases, except the death of the sd receiver for the time being, the sd, *mortgagor*, his hrs, [or, exs, ads], or assigns, will join with the sd, *mortgagee*, his [mortgagees, their] exs, ads, or assigns, in removing the sd receiver from the sd employmt, and will in any of such cases appoint such other fit pson in the place of the receiver so dying or being removed as the sd, *mortgagee*, his [mortgagees, their] exs, ads, or assigns shall nominate to receive

(1) See the Conv. Act, 1882, s. 8.

Power for mortgagee to appoint on mortgagor's refusal.

and apply the sd rents and profits in mner afsd : AND THAT in case the sd, *mortgagor*, his hrs, [*or*, *exs*, *ads*], or assigns, shall refuse or neglect so to do within one calendar month after being required in that behalf in writing by the sd, *mortgagee*, his [*mortgagees*, *their*] *exs*, *ads*, or assigns, or in case the sd, *mortgagor*, his hrs, [*or*, *exs*, *ads*], or assigns, shall from any disability be unable to remove or nominate a receiver, then it shall be lawful for the sd, *mortgagee*, his [*mortgagees*, *their*] *exs*, *ads*, or assigns, without the concurrence of the sd, *mortgagor*, his hrs, [*or*, *exs*, *ads*], or assigns, to remove the receiver for the time being, and to appoint some fit pson to receive and

Mortgagee not to be liable for default of receiver.

apply the sd rents and profits in mner afsd : PROVD ALWAYS, and it is hby agrd that the sd, *mortgagee*, his [*mortgagees*, *their*] hrs, *exs*, *ads*, or assigns, or any of them, shall not be answerable for any loss or misapplication of the sd rents and profits, or any pt thof, by reason of any default, neglect, or breach of trust, of or by the sd receiver for the time being, but that such loss and misapplication, and every receiver's salary, shall be wholly borne and paid by the sd, *mortgagor*, his hrs, *exs*, *ads*, or assigns : [PROVD ALSO, and it is hby agrd that the sd receiver shall not act or assist in the execution of the trusts or powers hinbefore contd, unless and until some half-yearly [quarterly] paymt of interest owing on this [the afsd] secy shall be wholly or partially in arrear for one calendar month, or unless and until some policy of assurance for the time being subjt to this [the sd] secy shall become void, or unless and until the sd, *mortgagor*, his hrs, *exs*, *ads*, or assigns, shall make default in performing or observing any of the covenants or provons hinbefore contd and on his or their pt to be performed or observed other than the covenants for the paymt of the principal monies and interest hby secured.]

Receiver not to act until interest in arrear.

Appointment of receiver. A short form with

XXXIII. AND IN conson of the premes the sd, *mortgagor*, with the concurrence of the sd, *mortgagee* [*s*], doth hby appoint the sd, *receiver*, to be receiver of the rents, profits, and income of the sd premes hby mtged, and it is hby agrd

that the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, may remove the sd receiver and appoint a new receiver from time to time in the same mner as if the monies hby secured had become payable, and as if [he or] they had become entld to exercise the power of sale conferred by the Conveyancing and Law of Property Act, 1881, [*or, if the statutory power of sale is excluded*, as if the power of sale conferred on mtgees by the Conveyancing and Law of Property Act, 1881, were applicable to this secy and had become exerciseable], and all the provons of the same Act with respect to the appointmt of receivers by mtgees and the powers, remuneration, and duties of receivers so appointed shall, as far as may be, apply accordingly with reference to the sd, *receiver*, and any future receiver appointed under this secy.

xxxiv. PROVD ALWAYS and it is hby agrd that any receiver appointed by the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, of the premes hby mtged or any pt thof under the power in that behalf conferred on [him and] them by statute (*m*) may make allowances to and arrangemts with the present and future tenants and occupiers of the sd premes or other psons by whom the rents and profits thof may be payable, and shall if required by the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, from time to time pay any monies in his hands which but for this present provo would be payable to the sd, *mortgagor*, his hrs, exs, ads, or assigns, or any pt of such monies, into the — Bank, at —, or some other bank to be approved of by the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, as a fund to provide for the interest then next accruing to [him or] them under this secy, and any other paymts hby or by statute authorised or required to be made thereout or which may become pay-

(*m*) Where a receiver is appointed under the preceding form by reference to the Statute say, "that the sd, *receiver*, and any receiver appointed under the power lastly hinbefore contd."

able other than the paymt to the sd, *mortgagor*, his hrs, exs, ads, or assigns, and shall also if required from time to time retain such a sum in the sd bank as shall be deemed proper for the ppose of keeping the account open.

Addition
to express
or statutory
powers of
sale, &c.,
in mort-
gage of an
undivided
share.

xxxv. PROVD ALWAYS, and it is hby agrd that the powers of sale and leasing [and appointing receivers] hinbefore contd [conferred by statute on mtgees] may be exercised either in relation to the sd moiety [shares] hby mtged of the sd premes hinbefore described or in conjunction with the owner or owners for the time being of, or the pson or psons for the time being having power in that behalf over, the other moiety [shares] of the sd premes in relation to the entirety thof.

Power of
partition
in mort-
gage of
undivided
share.

xxxvi. PROVD ALWAYS, and it is hby agrd that it shall be lawful for the sd, *mortgagee*, his [*mortgagees* their] exs, ads, or assigns, at any time or times after the sd — day of — next, without any further consent of the sd, *mortgagor*, his hrs, [exs, ads], or assigns, to concur with the owner or owners for the time being of or the pson or psons for the time being having power in that behalf over the other moiety [shares] of the sd hereds and premes hinbefore described in making a partition of the same premes or any pt or pts thereof, and to give or receive money for equality of partition, and to make such partition upon such terms and condons as [he or] they shall think fit, with power to rescind or vary any contract for partition without being responsible for loss, and to enter into and do any agreemts, assurances, or acts for the pposes afsd (n); PROVD THAT

(n) A provision for the concurrence of the heir of the mortgagee to convey the legal estate in the case of freeholds or copyholds is not required, as it vests in the personal representative of the mortgagee under the Conv. Act, 1881, s. 30; but if the legal estate is outstanding in trustees, add here: "and that the trees or tree in whom the legal este in the said moiety [shares] hby mtged shall be vested, shall make such assurance or assurances thof for effectuating such partition as the pson or psons making the same shall direct."

the sd power of partition shall not be exercised unless and until the power of sale vested in the sd, *mortgagee*, his [*mortgagees*, their] exs, ads and assigns, by virtue of these presents shall have become exerciseable, and [he or] they shall have given a notice, &c., *continue clauses as to notice and as to protection of purchasers and as to application of monies as in power of sale, p. 25, form I., mutatis mutandis, saying*, "the owner or owners for the time being of or pson or psns having power to partition the other moiety [share] of the sd premes shall not be concerned," &c., and, "the monies to be received for equality on any such partition as afd": AND it is hby agrd that every sum of money which may be paid by the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, or assigns, for equality of partition under the power hinbefore contd, with interest, &c., shall be repaid to [him or] them by the sd, *mortgagor*, his hrs, exs, ads, or assigns, on demand, and until paymt shall be charged on all the hereds and premes for the time being subjt to this secy; AND it is hby further agrd that the hereds taken upon any such partition shall be subjt in all respects to this secy and to the power of sale and all other powers and provons conferred by or incident to the same, other than the sd power of partition.

xxxvii. PROVD ALWAYS, and it is hby agrd that the sd, *Mortgagee*, his [*mortgagees*, their] hrs, exs, ads, and assigns, or any of them, shall not be answerable for any involuntary losses which may happen in or about the exercise or execution of [the power of sale or] any of the powers or trusts herein contd [or which may be vested in [him or] them by virtue of any statute]. Mortgagee's indemnity clause.

xxxviii. PROVD ALWAYS, and it is hby agrd that the rect of any of the cashiers of the sd bank for any principal monies or interest hby secured, or for any monies arising from a sale of the sd mtged premes or any pt thof under the power of sale hinbefore contd [hby implied] [or any monies, stocks, funds, or secs, comprised in or arising under this secy], shall effectually discharge the pson or psns [or Receipt clause in mortgage to bank.

co] paying or transferring the same thfrom, and from being concerned to see to the application thof, whether any money remains owing on this secy or not.

Proviso as
to changes
in firm (o).

xxxix. PROVD ALWAYS, and it is hby decl'd that this secy shall not be affected by reason of, *or*, "these presents are intd to be a continuing secy for the monies or balance from time to time owing from [to] the sd firm of X. & Co., as hbefore provd, notwithstanding," any change in the sd firm of X. & Co., by the death or retirement of any member or members, or the introduction of any new member or members, or any change in the style or title of such firm.

Clause pre-
serving
right of
consoli-
dation (p).

XL. AND IT IS HBY AGRD that notwithstanding any provon to the contrary contd in any statute now or for the time being in force, the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, and assigns, shall be entld to consolidate this secy with any other secy which [he or] they may at any time hold on any other ppty, for any other debt for the time being owing to [him or] them from the sd, *mortgagor*, his hrs, exs, or ads.

Acknow-
ledgment
of right to
production
and under-
taking for
safe cus-
tody by a
mortgagor
who re-
tains the
deeds (q).

xli. The sd, *mortgagor*, hby acknowledges the right of the sd, *mortgagee* [*s*], to the production and delivery of copies of the documts mentd in the schedule hto (which are now in the possion of and retained by the sd, *mortgagor*); AND hby undertakes with the sd, *mortgagee* [*s*], for the safe custody of the same documts: PROVD ALWAYS and it is hby agrd that so long as any right of redemption shall remain subsisting under these presents, all costs and ex-

(o) See, as to this clause, 2 Dav. Prec., part 2, pp. 372 *et seq.*, note.

Consolida-
tion of
mortgages.

(p) As to the doctrine of the consolidation of mortgages, see 2 Dav. Prec., part 2, pp. 238 *et seq.*; Elph. Introd. Conv. p. 231; *Harter v. Colman*, 19 Ch. D. 630. The right of consolidation is abolished, where either or both of the mortgages is made since 1881, by the Conv. Act, 1881, s. 17, but only if a contrary intention is not expressed in the mortgages or one of them; so that the right may be kept alive by express declaration. The clause in the text is not inserted for general use, but occasionally, where (as in the case of builders) there is a likelihood of several mortgage transactions occurring between the same parties, its insertion may be proper.

(q) See the Conv. Act, 1881, s. 9, Vol. I., p. 386, note. The retention of

penses incurred by either pty of or incidental to the specific performance of any obligation imposed by the acknowledged mortgagee hereinafter shall be paid by the sd, *mortgagor*, his heirs, executors, administrators, or assigns, and that all costs and expenses so incurred by the sd, *mortgagee*, his [mortgagees, their] executors, administrators, or assigns, with interest thereon, at the rate of — per cent. per annum, from the time of the same having been expended, shall on demand be repaid to [him or] them by the sd, *mortgagor*, his heirs, executors, administrators, or assigns, and until such repayment shall be a charge on all the premises hereby mortgaged.

XLII. PROVID ALWAYS, and it is hereby agreed that all the powers and rights hereinafter given to the sd, *mortgagees*, their executors, administrators, and assigns, shall be exercisable by and devolve upon the [survivors and] survivor of them, and the executors and administrators of such survivor, their or his assigns, or the person or persons for the time being entitled to receive and give an effectual discharge for the monies hereby secured.

XLIII. PROVID LASTLY, and it is hereby decided that unless such interpretation is excluded by or repugnant to the context, clause (s).

any of the deeds by the mortgagor should seldom be permitted (see 2 Dav. Prec., part 2, p. 238); but it is occasionally necessary, in which case a memorandum of the mortgage should generally be indorsed on one or more of them. The proviso at the end of this form is necessary. See the Act, s. 9 (5), (13).

(r) See p. 10, note (f),

(s) See p. 2, note, p. 9, note. Where this interpretation clause is used, or where the words "mortgagor," and "mortgagee" are similarly defined at the commencement of the deed (as in p. 74, note), the words "heirs and assigns," or "executors, administrators, and assigns," in the case of the mortgagor, and "executors, administrators, and assigns," in the case of the mortgagee, will be omitted throughout; but wherever the words "heirs, executors, and administrators," occur together, whether in the case of the mortgagor or mortgagee (as in the proviso for redemption), those words should be retained, and in a mortgage of freeholds or copyholds, inasmuch as the word "mortgagee" when used alone, is defined to include his personal representatives and not his heirs, the words "heirs and assigns" must, in the case of the mortgagee, be inserted wherever those words are used in the full forms. On account of the risk of clerical errors arising from the similarity of the words "mortgagor" and "mort-

Clause as to devolution of powers in mortgage to several on a joint account (r).

Interpretation clause (s).

As to use of interpretation clause.

or, "whenever the context so requires or admits," the expression, "the mtgor," as hinfere used, shall include his hrs, [*or in case of leaseholds or personalty*, "exs, ads,"] and assigns, and the expression, "the mtgee [s]," shall include his exs, ads, and assigns, [the survors and survivor of them, and the exs or ads of such survivor and their or his assigns].

COVENANTS FOR TITLE (a).

I.

ORDINARY FORM for FREEHOLDS or COPYHOLDS.

VARIATIONS for a mortgage SUBJECT to PRIOR CHARGES or INCUMBRANCES; also for the case where OTHER PERSONS besides the Mortgagor JOIN in the CONVEYANCE; and where the mortgage-money is PAYABLE on DEMAND.

For right
to convey.

AND THE SD, mortgagor, doth hby covenant with the sd, mortgagee, his [mortgagees, their] hrs and assigns, that he,

gagee" it might be desirable to use the expressions "owner" and "mortgagee" or some other expressions which are free from this objection.

Provisions
of the
Conv. Act,
1881, as to
implying
covenants
for title,
&c., in
mortgages,
&c.

(a) The Conv. Act, 1881, s. 7, enables the usual absolute covenants for title, &c., in a mortgage to be implied by making the mortgagor convey "as beneficial owner," in the same manner as the qualified covenants for title may be implied in a conveyance on sale, see Vol. I. pp. 365 *et seq.* note. The covenants implied are for right to convey, quiet enjoyment after default, freedom from incumbrances, and further assurance (sub-sec. 1, C.), with the addition in the case of leaseholds of a covenant that the lease is good, and that the rents and covenants have been paid and performed, and for the indemnity of the mortgagee in respect of the rents and covenants in the future (subs. 1, D.). Although the statutory covenants do not apply to a demise by way of lease *at a rent* (subs. 5), they do apply to a lease *not* reserving a rent (see the definition of "Conveyance" in s. 2), and may therefore be implied in a mortgage by demise of freeholds or leaseholds. Where it is desired to imply only a covenant against incumbrances by a person other than the mortgagor joining in the mortgage, or by a mortgagee in a transfer or re-conveyance, this may be done by making him convey "as trustee" or "mortgagee" or as the case may be, under sub-sec. 1, F. Where more persons than one

the sd, *mortgagor* (b), now has power to assure (c) all the sd premises hby mtged to the use of the sd, *mortgagee*, his, [*mortgagees*, their] hrs and assigns, [*if copyhold*, according to the custom of the sd manor] (d); AND THAT, in case default shall be made in paymt of the sd sum of £—— or the interest thof, or any pt thof resply, on the sd —— day of —— next (e), it shall be lawful for the sd, *mortgagee*, his,

For quiet enjoyment after default.

join in the conveyance, the implied covenant of each extends to the subject-matter expressed to be conveyed by him. The large definitions of "conveyance," "mortgage," and "property" in s. 2, will be borne in mind in construing these provisions, which apply to property of any description, real or personal; and having regard to the definitions of "conveyance" and "mortgage," it is apprehended that a mortgage in the form of a mere charge, if by deed, may be made to imply the statutory covenants. The remarks in Vol. I. pp. 365 *et seq.* note, as to the implied covenants in a conveyance on sale, are applicable to the corresponding covenants in a mortgage, subject to the modification that the covenants by a beneficial owner are absolute instead of qualified. The provisions of the Act as to married women (subs. 3), are of diminished importance, since a married woman is under the Married Women's Property Act, 1882, able to covenant as a *feme sole*.

It is considered that the statutory covenants may in general be safely relied upon (except as to property abroad), and that the covenants in question should be omitted in mortgages, transfers, and re-conveyances, the necessary words to imply the statutory covenants being inserted; and the covenants may be implied in equitable as well as legal mortgages, if by deed. But the old forms of covenants for title, &c., are given in the text for use, if desired. Occasionally, it is intended that the mortgagee shall have power to take possession at any time, although no default has been made in payment of the mortgage money; in that case, the statutory covenant for quiet enjoyment, which arises only after default, may, if thought material, be extended, but the point is of small importance.

The Act should be relied upon.

(b) If other parties join in the conveyance, add here, "with the concurrence of the sd, *other conveying parties*."

(c) Or "grant," "appoint," "appoint and grant," or "surrender," as the case may be.

(d) If the mortgage is subject to a prior charge or charges, add, "subjt to the sd indre of mtge of the —— day of —— and the sum of £—— and interest thby secured as aforesd," or "subjt to the sd respcive charges and incumbrances to which the mtge hby made is hinbefore expd to be subjt," or "subjt as aforesd."

(e) If the mortgage-money is payable on demand, the words "on demand" will be substituted for the words "on the sd —— day of —— next."

Free from
incum-
brances.

For further
assurance.

[*mortgagees*, their] hrs and assigns, quietly to enter upon the same premes, and every pt thof, and the same thenceforth to hold and quietly enjoy, and to receive the rents and profits thof (*f*), without any interruption, claim, or demand by the sd, *mortgagor*, or any pson whomsoever (*g*); AND THAT, free and discharged from or otherwise by the sd, *mortgagor*, his hrs, exs, or ads, sufficiently indemnified against all estes, incumbrances, claims, and demands whatsoever (*h*): AND FURTHER THAT he, the sd, *mortgagor*, and every other pson having or claiming any este or interest in the sd premes, or any pt thof, will at all times, at the cost until foreclosure or sale of the sd, *mortgagor*, his hrs, exs, or ads, and afterwards of the pson or psons requiring the same, execute and do all such assurances and acts for further or more effectually assuring the sd premes, or any pt thof, to the use of the sd, *mortgagee*, his [*mortgagees*, their] hrs and assigns, [according to the custom of the sd manor] (*i*), as shall be reasbly required.

(*f*) If the mortgage is subject to a prior charge or charges, add "subjt as aforesd."

(*g*) If the mortgage is subject to a prior charge or charges, add, "other than and except any pson or psons claiming in respect of the sd mtge," or "in respect of any of the prior charges or incumbrances afsd."

(*h*) If the mortgage is subject to a prior charge or charges, add, "save and except the sd indre of mtge," or "the respive prior charges and incumbrances afsd, and claims and demands in respect thereof."

(*i*) If the mortgage is subject to a prior charge or charges, add, "subjt as afsd."

II.

LEASEHOLDS *mortgaged by* ASSIGNMENT. VARIATIONS *as in form I., also for Mortgage by UNDERLEASE, and for SEVERAL LEASES.*

AND THE SD, *mortgagor*, doth hby covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, that the hinbefore recited lease is now valid and subsisting [*or, if several leases*, the hinbefore recited leases are resply now valid and subsisting], and in nowise forfeited, surrendered, or become void or voidable: AND THAT the rent [*respive rents*], and covenants and agreemts on the pt of the lessee [*respive lessees*], and condons by and in the same [*resply*] reserved and contd, have been duly paid, observed, and performed up to the date of these presents: AND THAT, he, the sd, *mortgagor* (a), now has full power to assign [*demise*] all the sd mtged premes unto the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, for the term [*respive terms*], and in mner (b) afsd: AND that in case default shall be made in paymt of the sd sum of £—— or the interest thof, or any pt thof resply, on the sd —— day of —— next (c), it shall be lawful for the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, quietly to enter upon the same premes, and every pt thof, and the same thenceforth during the sd term [*respive terms*] to hold and quietly enjoy, and to receive the rents and profits thof (d), without any inter-

That lease
is good.

That rent
and cove-
nants have
been paid
and per-
formed.

For right
to assign or
demise.

For quiet
enjoyment
after de-
fault.

(a) If other persons besides the mortgagor join in the assurance, add here, “with the concurrence of the sd, *other conveying parties*.”

(b) If the mortgage is subject to a prior charge or charges, add, as in p. 65, note (d), above.

(c) If the mortgage-money is payable on demand, the words “on demand” will be substituted for the words “on the sd —— day of —— next.”

(d) If the mortgage is subject to a prior charge or charges, say, “subjt as afsd.”

Free from
incum-
brances.

For further
assurance.

For pay-
ment of
rent and
perform-
ance of
covenants
of lease.

ruption, claim, or demand by the sd, *mortgagor*, or any pson whomsoever (e): AND THAT free and discharged from or otherwise by the sd, *mortgagor*, his hrs, exs, or ads, sufficiently indemnified against all estes, incumbrances, claims, and demands whatsoever (f): AND FURTHER, that he the sd, *mortgagor*, and every other pson having or claiming any este or interest in the sd premes, or any pt thof, will at all times hereafter at the cost until foreclosure or sale of the sd, *mortgagor*, his exs or ads, and afterwards of the pson or psns requiring the same, execute and do all such assurances and acts for further or more effectually assuring the sd premes, or any pt thof, unto the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, for all the residue which shall be then unexpired of the sd term [respive terms,] [except the sd nominal reversion of one day hby reserved, and also if thereunto required the sd reversion] (g) as shall be reasbly required: AND ALSO that he, the sd, *mortgagor*, his hrs, exs, ads, or assigns will, during the continuance of this secy, duly pay the rent [respive rents] reserved by, and perform and observe the covenants and agreemts on the pt of the lessee [respive lessees] and condons contd in the sd lease [respive leases], and will at all times keep the sd, *mortgagee*, his, [*mortgagees*, and every of them, their and every of their] hrs, exs, ads, and assigns, indemnified against the same, and all actions, proceedings, costs, damages, claims, and demands in respect thof.

(e) If the mortgage is subject to a prior charge or charges, add as in page 66, note (g) above.

(f) If the mortgage is subject to a prior charge or charges, add "save as afsd."

(g) If the mortgage is subject to a prior charge or charges, say "subj as afsd."

III.

FREEHOLDS, COPYHOLDS, and LEASEHOLDS.

VARIATIONS *as in form I.*

AND THE SD, *mortgagor*, doth hby covenant with the sd, *mortgagee*, his, [*mortgagees*, their] hrs, exs, ads, and assigns, ^{That lease is good, &c.} that, *lease is good, and rent and covenants paid and performed, as in form II.*: AND THAT he the sd, *mortgagor* (a), now has full power to assure (b) all the sd freehd premes hby ^{For right to convey.} mtged to the use of the sd, *mortgagee*, his [*mortgagees*, their] hrs and assigns in mner afsd (c), and to surrender all the sd copyhd or customaryhd premes hby mtged to the use of the sd, *mortgagee*, his, [*mortgagees*, their] hrs and assigns, in mner afsd, according to the custom of the sd manor (c), and also to assign [demise] all the sd leasehd premes hby mtged unto the sd, *mortgagee*, his [*mortgagees*, their] exs, ads, and assigns, for the term [respive terms], and in mner afsd (c): AND that in case default shall be made in paymt ^{For quiet enjoyment after default.} of the sd sum of £——, or the interest thof, or any pt thof, resply, on the sd —— day of —— next (d), it shall be lawful for the sd, *mortgagee*, his, [*mortgagees*, their] hrs, exs,

(a) If other parties join in conveying, add here, “with the concurrence of the sd, *other parties*.”

(b) Or “grant,” “appoint,” or “appoint and grant,” as the case may be.

(c) If the mortgage is subject to a prior charge or charges, add here, “subjt to the sd indre of mtge of the —— day of ——, and the sd sum of £—— and interest thby secured as afsd,” or “subjt to the sd prior charges and incumbrances to which the same premes are hinbefore expressed to be subjt,” or “subjt as afsd.”

(d) If the mortgage-money is payable on demand, the words “on demand” will be substituted for the words “on the sd —— day of —— next.”

For further
assurance.

ads, and assigns resply, quietly to enter upon the sd mtged premes, or any pt thof resply, and the same thenceforth to hold and enjoy, and to receive the rents and profits thof accordingly (e), without any interruption, claim, or demand by the sd, *mortgagor*, or any pson whomsoever (f): AND THAT, &c., *free from incumbrances, as in form I.*: AND FURTHER, that he the sd, *mortgagor*, and every other pson having or claiming any este or interest in or to the sd mtged premes, or any pt thof resply, will at all times hereafter, at the cost, until foreclosure or sale, of the sd, *mortgagor*, his hrs, exs, or ads, and afterwards of the pson or psons requiring the same, execute and do all such assurances and acts for further or more effectually assuring the sd freehd, and copyhd, or customaryhd premes, or any pt thof resply, to the use of the sd, *mortgagee*, his, [*mortgagees*, their] hrs and assigns, in mner (g) afsd, and assuring the sd leasehd premes, or any pt thof, unto the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, for all the residue which shall be then unexpired of the sd term [respive terms] in mner (g) afsd, [and also, if thereunto required, the sd reversion of one day hby reserved] as shall be reasbly required: And also that, &c., *for payment of rent and performance of covenants of lease, as in form II.*

(e) If the mortgage is subject to a prior charge or charges, add, here, "subjt as afsd."

(f) If the mortgage is subject to a prior charge or charges, add, "other than and except any pson or psons claiming in respect of the sd mtge," or "in respect of any of the prior charges and incumbrances afsd."

(g) If the mortgage is subject to a prior charge or charges, add, "and subjt as."

IV.

PERSONALTY. VARIATIONS *for a Policy of Assurance, and for a Mortgage* SUBJECT TO PRIOR CHARGES OR INCUMBRANCES.

AND THE sd, *mortgagor*, doth hby covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, ^{For right to assign.} [*for a policy say*, that the sd policy of assurance hby mtged is now valid and subsisting, and in nowise forfeited or become void or voidable and] that he, the sd, *mortgagor*, now has full power to assign the sd [policy and all other the] premes hby mtged unto the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, in mner afsd, free from incumbrances [save as afsd ;] AND THAT he the sd, *mortgagor*, and every ^{For further assurance.} pson having or claiming any este or interest in or to the sd mtged premes, or any pt thof, will at all times hereafter, at the cost, until foreclosure or sale, of the sd, *mortgagor*, his exs or ads, and afterwards of the pson or psons requiring the same, execute and do all such assurances and acts for further or more effectually assuring the sd premes, or any pt thof, unto the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, and assigns, and enabling [him or] them to recover and receive [or obtain paymt, transfer, or delivery of] the same, [subjt as afsd] as shall be reasbly required.

V.

COVENANT *against Incumbrances by one for Free-holds or Copyholds.* VARIATIONS *for Leaseholds or Personality.*

AND THE sd, *covenantor*, doth hby covenant with the sd, *mortgagee or transferee*, his, [*mortgagees or transferees*, their] hrs (a) and assigns, that the sd, *covenantor*, has not at any

(a) For leaseholds or personality, " exs, ads."

time heretofore done or knowingly omitted or suffered, or been pty or privy to anything whby or by means whof the sd premes hby assured (b), or any pt thof, are, is, or may be incumbered or affected in any mner whatsoever, or whby he the sd, *covenantor*, is in anywise prevented from assuring (c), the same premes, or any pt thof, in mner afsd.

VI.

COVENANT *against* INCUMBRANCES *by* Two or more for FREEHOLDS or COPYHOLDS. VARIATIONS *for* LEASEHOLDS or PERSONALTY.

AND EACH of them, the sd, *covenantors*, so far as relates to his own acts and omissions only, doth hby covenant with the sd, *mortgagee or transferee*, his [*mortgagees or transferees*, their] hrs (a) and assigns, that they, the sd, *covenantors*, or, "the sd covenanting pties," resply have not at any time heretofore done, or knowingly omitted or suffered, or been pty or privy to anything whby or by means whof the sd premes hby assured (b), or any pt thof, are, is or may be incumbered or affected in any mner whatsoever, or whby they the sd, *covenantors*, or, "the sd covenanting pties," resply are in anywise prevented from assuring (c) the same premes, or any pt thof, in mner afsd.

(b) "Granted," "surrendered," or "assigned," as the case may be, or if that expression be appropriate, "the sd premes hby mtged."

(c) "Granting," "surrendering," or "assigning."

(a) For leaseholds or personalty, "exs, ads."

PRECEDENTS. (a)

I.

MORTGAGE in FEE of FREEHOLDS by ONE MORTGAGOR to ONE MORTGAGEE, with VARIATIONS for a MORTGAGE to TRUSTEES (b) or others advancing money on a JOINT ACCOUNT. VARIATIONS also where the mortgagor's WIFE joins to release her DOWER, where the mortgagor is entitled to USES To BAR DOWER, and where RECITALS are OMITTED (c). PREC. I.

THIS INDRE made the — day of — BETWEEN Parties.

(a) For precedents of equitable charges accompanying a deposit of deeds or other documents of title, see *infra*.

(b) As to the importance of taking mortgages in this form, so as to avoid disclosing the trusts, see 2 Dav. Prec., part 2, pp. 51, 805. As to mortgages to trustees.

(c) The variations where the wife concurs to release her dower (which is only necessary where the parties were married on or before 1st January, 1834), will be similar to those in a conveyance on sale, see Vol. I., p. 405. Variations where the wife releases her dower. As to the wife's right to dower out of the equity of redemption in such a case, see *Dawson v. Bank of Whitehaven*, 6 Ch. D. 218; 2 Dav. Prec., part 2, p. 318, note; and see the variations there suggested in the mortgage in order to keep alive her right. If the husband acquired the property before 1883, the wife must acknowledge the deed (see as to the mode of acknowledgment the Conv. Act, 1882, s. 7); but if the property was acquired after 1882, the wife's disability is removed by the Married Women's Property Act, 1882, ss. 1 and 5.

If the mortgagor is entitled to uses to bar dower, the form of conveyance will be, "the sd A. as beneficial owner in exercise of the power limited or given to him by the hinbefore recited indre [an indre dated, &c., and expd to be made, &c.], and of every other power enabling him in this behalf, doth hby appoint, and by virtue of his este and interest, and by way of further assurance, doth hby grant and confirm unto the sd B., &c.;" and the premises will be described as "hby appointed and granted," or "assured." Variations where the mortgagor is entitled to uses to bar dower. In other respects the mortgage will, in that case, be in the usual form.

PREC. I.	A., mortgagor, of, &c. (d), of the one pt, and B., mortgagee, of, &c. (d) [B., of, &c., C., of, &c., and D., of, &c., mortgagees] of the other pt; [Recite title of mortgagor to, "the hereds hby mtged," as in a conveyance on sale, see Vol. I., pp. 329, et seq.; Agreement for loan, p. 1, form I., for a mortgage to trustees, form II., NOW THIS INDRE] WITNETH that [in psuance of the sd recited agreemt, and] in conson of the sum of £—— now pd to the sd A. by the sd
Witnesseth.	B. [C. and D. out of monies belonging to them on a joint account], the rect whof is hereby acknowledged (e), covenant to pay principal, pp. 9, 10, form I. or II., and interest after default, p. 10; AND THIS INDRE ALSO WITNETH that [in further psuance of the sd recited agreemt and] for the conson afsd the sd A. as beneficial owner (f) doth hby
Covenant for payment.	grant (g) unto the sd B., his [B., C., and D., their] hrs and
Also witnesseth.	
Grant.	

Use of interpretation clause. (d) The deed may be somewhat shortened by describing the parties as "mtgor" and "mtgee," and using an interpretation clause which may be placed after the names and addresses of the parties thus: "hinafter called the mtgor, which expression shall be deemed to include his hrs and assigns, where the context so requires or admits"; and "hinafter called the mtgee[s], which expression shall be deemed to include his [their] exs, ads, and assigns, where the context, &c." Or, if preferred, the interpretation clause may be placed at the end of the deed, see p. 63, form XLVII., and see the note to that form as to the use of the interpretation clause.

(e) As to the omission of the endorsed receipt for the consideration money, see the Conv. Act, 1881, s. 54, vol. I., p. 341, note.

As to implying covenants for title, &c.

(f) The words "as beneficial owner" are inserted to imply the usual covenants for title and further assurance by virtue of the Conv. Act, 1881, s. 7; see p. 64, note. It is assumed in these precedents that the mortgagor's covenants for title, and the covenants by trustees or mortgagees against incumbrances, will be omitted, as it is considered they should be, in reliance on the Act; otherwise the words "as beneficial owner," or "as tree" or "mtgee," &c. (as the case may be), which are inserted to raise the implied covenants for title, &c., will be omitted, and the express covenants for title, &c., or against incumbrances (for forms of which see pp. 64, et seq., and p. 71), will be inserted at or near the end of the deed.

(g) As to using the word "convey" instead of "grant," see the Conv. Act, 1881, s. 2, vol. I., p. 368, note.

assigns (a), *Parcels*, see Vol. I., p. 844, omitting the general words and estate clause (b), To HOLD all the sd premes hby assured UNTO AND TO THE USE of the sd B., his [B., C., and D., their] hrs and assigns for ever, subject to the leases and agreemts with the tenants which are hinbefore (*i.e.*, in the parcels) mentd or referred to, or give the short particulars of the leases and tenancies here, see Vol. I., p. 360, and subj to the proviso for redemption hinafter contd; *Proviso for redemption*, p. 17, form I., or for brevity, form XVI. p. 22; *If buildings form a material part of the security*, add a covenant to insure and repair, p. 44, or the short form of covenant to insure in reliance on the statute, p. 46, form XXIV.; [*Power of sale*, p. 22, form I., unless omitted in reliance on the statute, see p. 22, note, or clause modifying the statutory power, p. 81]; *Mortgagee's indemnity clause*, p. 61 (c). In a mortgage to trustees add, if thought proper, the joint account clause, p. 89, and the clause as to the devolution of the powers, p. 68.

IN WITNESS, &c.

II.

MORTGAGE of COPYHOLDS by ONE MORTGAGOR to ONE MORTGAGEE where the DEED PRECEDES the

(a) As to the substitution of the words "in fee simple," for "hrs and assigns," see the Conv. Act, 1881, s. 51, Vol. I., p. 359, note.

(b) See as to the omission of the general words and "all the estate" clause, the Conv. Act, 1881, ss. 6 and 63; vol. I., pp. 357, 359, notes.

(c) As to the old practice, where the mortgagor is in the occupation of the property, of inserting an attornment clause or power of distress for the interest, and the difficulties occasioned by the Bills of Sale Acts, 1878 and 1882, see p. 52, note. As to excluding or restricting the power given by the Conv. Act, 1881, s. 18, to the mortgagor to grant rack-rent leases for occupation or building purposes, see p. 48, note; and as to excluding s. 17 of the same Act abolishing the right of consolidation, see p. 62, note. Where the mortgagees are trustees it is clear that they would not incur any responsibility by not excluding the application of these provisions, especially having regard to s. 66 (3) of the Act, which affords them full protection.

PREC. II.

SURRENDER. VARIATIONS for a mortgage to TRUSTEES, and where RECITALS are OMITTED (a).

Wit-
nesseth.
Covenant
for pay-
ment.

Also wit-
nesseth.

Covenant
to sur-
render.

Haben-
dum.

PARTIES, A., mortgagor, 1 ; B., mortgagee [B., C. and D., mortgagees], 2 ; [Recite admission of A. ; "to the hereds hby mtged," Vol. I. p. 319, or seisin of A., Vol. I. p. 410 ; Agreement for loan, p. 1, for trustees, p. 2, form II. ; NOW THIS INDRE] WITNETH that [in psuance of the sd recited agreemt and], consideration, receipt, covenant by A. to pay principal, p. 9 ; and interest after default, p. 10 ; AND THIS INDRE ALSO WITNETH that [in further psuance of the sd recited agreemt and] for the conson afsd the sd A. as beneficial owner (b) doth hby covenant with the sd B. his [B., C., and D., their] exs, ads, and assigns, that he the sd A., or his hrs, and all other necessary pties, if any, will forthwith at his or their own cost surrender into the hands of the lord or lords of the sd manor [the manor of — in the county of —] according to the custom thof [into the hands of the lords of the manors of which the same are respby holden as hinbefore is recited, according to the customs thof respby], *Parcels*, see Vol. I. p. 344, [to which premes the sd A. was admitted at a court holden, &c., or, "out of court" on the — day of —] omitting general words and estate clause, see Vol. I. pp. 357, 359, and 412. To THE USE of the sd B., his [B., C., and D., their] hrs and assigns, to be holden of the lord of the sd manor [lords of the respive manors of which the same are respby holden] by copy of Court roll, according to the custom[s] thof [respby] by and

Deed
should pre-
cede sur-
render.

(a) See the notes to Precedent I. In a mortgage of copyholds the deed should, if possible, precede the surrender as in this precedent ; otherwise it would not be a "mortgage" within the Conv. Act, 1831, s. 2, so as to enable the statutory covenants for title to be implied under s. 7, or the statutory powers of sale, &c., to be implied under s. 19 ; but the insertion in that case of some words amounting to a charge within the definition of "mortgage" in s. 2 might obviate both these objections, see p. 22, note, p. 65, note (a).

(b) See p. 74, note. The statutory covenants for title may be implied, as the word "conveyance" in the Act includes a covenant to surrender (see s. 2).

under the rents, fines, suits, and services due and of right accustomed for the same ; *Proviso for redemption for copyholds*, p. 19, form IV. ; *Declaration of trust for B. [C. and D.] till surrender*, p. 33 ; *Covenant to insure and repair if appropriate*, p. 44, or *short clause supplemental to statute*, p. 46, form XXIV. ; [*Power of sale*, p. 22, unless omitted in reliance on the Act, see p. 22, note, or *clause varying statutory power*, p. 31] ; *Mortgagee's indemnity clause*, p. 61 ; *In a mortgage to trustees add, if thought proper, the joint account clause*, p. 39 ; and the clause as to devolution of the powers, p. 63.

IN WITNESS, &c.

III.

SURRENDER of COPYHOLDS by way of MORTGAGE. PREC. III.

VARIATIONS for a mortgage to TRUSTEES, and where the security extends to FURTHER ADVANCES (a). —

Manor of — }
in the County of — } The — day of —.

BE IT REMEMBERED that on the day above mentd, A., of, &c., a customary tenant of the sd manor, came before me, X. [deputy] steward of the sd manor, and in conson of the sum of £—— to the sd A. paid by B., of, &c. [C., of, &c., and D., of, &c., out of monies belonging to them on a joint account] (the rect whof is hereunder acknowledged) did [out of Court] surrender into the hands of the lord of the sd manor, by the hands and acceptance of Surrender.

(a) For variations where the mortgagor's wife concurs, see vol. I., p. 411 ; but if the parties were married after 1882, or if they were married before 1883, but the property was acquired after 1882, the wife would be in the position of a *feme sole* by virtue of the Married Women's Property Act, 1882, ss. 1, 2, 5, and her separate examination would be unnecessary.

PREC. III. me the sd [deputy] steward by the rod according to the
 ——— custom of the sd manor, *Parcels, see Vol. I., p. 344, omitting*
the general words and estate clause, see Vol. I., pp. 357, 359,
 Habendum. notes. To THE USE of the sd B., his [B., C., and D., their] hrs
 and assigns for ever, at the will of the lord according to the
 custom of the sd manor, subjt to the rents, fines, suits, and
 Subject to services due and of right accustomed for the same; AND
 redemption. ALSO subjt to this condon, that if the sd A., his hrs, exs,
 ads, or assigns, shall pay to the sd B., his [B., C., and D.,
 their], exs, ads, or assigns, the sum of £—— on the ——
 day of —— next, togr with interest for the same in the
 meantime at the rate of —— per cent (c) per annum (d),
 then this surrender is to be void and of no effect.

Signature of A.

Taken the day and year }
 above written, by me, } X., [deputy] steward.

[Receipt for mortgage money.]

(c) If interest is reducible on punctual payment, this will be the higher rate.

(d) Where the security is to extend to further advances, add, “and shall, on such —— day of ——, or —— day of —— as shall happen next after the same resply shall be advanced or paid or become owing, pay to the sd, *mortgagee*, his, [*mortgagees*, their] exs, ads, or assigns, every other sum of money which may be advanced or paid by or become owing (except for interest) to [him or] them as afsd, with interest thereon as afsd.”

IV.

MORTGAGE of COPYHOLDS by ONE MORTGAGOR to PREC. IV.
 ONE MORTGAGEE, where the DEED FOLLOWS the
 SURRENDER (a).

PARTIES, A., mortgagor, 1; B., mortgagee, 2: *WHAS* for Recitals.
 the ppose of securing the repaymt of the sum of £——, this Conditional
 day lent by the sd B. to the sd A., with interest, the sd A. surrender.
 did, &c., *recite conditional surrender by A.*, p. 5; *AND* Agreement.
WHAS upon the treaty for the sd loan it was agrd that the
 repaymt thof, togr with interest on the day and after the rate
 afsd, should be further secured in mner hinafter appear-
 ing; *NOW THIS INDRE WITNETH* that in further Wit-
 psuance of the sd recited agreemt, and for the conson afsd, nesseth.
Covenant by A. to pay principal, p. 9, and *interest after*
default, p. 10; *Covenant to insure and repair, if appropriate*,
 p. 44; *Power of sale*, p. 22; *Mortgagee's indemnity clause*,
 p. 61; *Covenants for title by A.*, p. 64, *referring to the*
property as, "the sd premes comprd in the hinbefore recited
 conditional surrender," or, "the sd mtged premes."

IN WITNESS, &c.

V.

MORTGAGE of LEASEHOLDS by DEMISE by ONE PREC. V.
 MORTGAGOR to ONE MORTGAGEE. *VARIATIONS for*
a Mortgage by ASSIGNMENT, for a Mortgage to

(a) As this deed is neither a mortgage nor a conveyance, powers of sale and insurance and appointing receivers, and covenants for title cannot be implied by virtue of the Couv. Act, 1881, see p. 76, note (a), and vol. I., p. 410, note; the preceding form, where the deed precedes the surrender, is therefore much to be preferred.

PREC. V.

TRUSTEES or others advancing money on a JOINT ACCOUNT, and for SEVERAL LEASES (b).

Wit-
nesseth.
Demise.

Haben-
dum.

Mortgage
of lease-
holds made
by supple-
mental
deed.

Effect of
disclaimer
by trustee
in bank-
ruptcy of
mortgagor.

PARTIES, A., mortgagor, 1; B., mortgagee [B., C. and D., mortgagees], 2; Recitals of lease or leases setting out the parcels, and devolution (if any) of title to A., as in a conveyance on sale, see Vol. I., pp. 325, 326; Agreement for loan, p. 1, for a mortgage to trustees, p. 2, form II.; NOW THIS INDRE, &c., first testatum as in Precedent I.; AND THIS INDRE ALSO WITNETH, that in further pursuance of the sd recited agreemt, and for the conson afd the sd A. as beneficial owner (see p. 74, note) doth hby demise [assign] unto the sd B., his [B., C., and D., their] exs, ads, and assigns, *Parcels by reference to lease or leases, see Vol. I., p. 347, form XVIII., omitting general words and estate clause, see Vol. I., pp. 357, 359*: To HOLD all the sd premes hby

(b) See the notes to Prec. I. Recitals might in this case be dispensed with by treating the mortgage as annexed to the lease, or to the assignment thereof to the mortgagor; see the Conv. Act, 1881, s. 53, vol I., p. 75, note. This may be done by adding the following words after the "parties": "intended to be read as annexed to an indre dated, &c., and expd, &c., being a lease of certain messuages, land, and hereds situate, &c., to the sd A. for a term of — years, at the yearly rent of £—," or, "being an assignmt to the sd A. of a lease dated, &c., of certain messuages, &c., situate, &c." In that case the lease will be afterwards referred to as "above mentd."

If an interpretation clause is used in this case (see p. 63, note), both the "mtgor" and "mtgee [s]" will be defined to include his or their "exs, ads, and assigns."

A doubt has been felt as to what would be the effect upon a mortgage of leaseholds by demise of a disclaimer of the lease by the mortgagor's trustee in bankruptcy under the Bankruptcy Act, 1869, 32 & 33 Vict. c. 71, s. 23; but the decisions show that the disclaimer would not affect a legal mortgage whether by assignment or demise (see *O'Farrell v. Stephenson*, L. R. 4 Ir. 151, 715; *Smalley v. Hardinge*, 7 Q. B. D. 524; *Ex parte Walton*, 17 Ch. D. 746, though as to an equitable mortgage there appears to be more doubt, see *Re Woods*, 3 Ch. D. 459; *Ex parte Walton*); and as the declaration of trust of the nominal reversion would enable the mortgagee to obtain a vesting order under the Trustee Acts (see *Re Collingwood*, 6 W. R. 536; *Steele v. Waller*, 28 Beav. 466), the reversion also would, it is conceived, be protected against the disclaimer.

demised [assigned] UNTO the sd B., his [B., C., and D., PARC. V.
 their] exs, ads, and assigns, henceforth for the residue
 [several residues] now unexpired of the sd term of —
 years [several terms of years granted by the sd several
 indres of lease], *if mortgage is by demise*, “except the last
 day thof [last day of each such respive terms],” SUBJT to
 the proviso for redemption hinafter contd; *Proviso for
 redemption*, p. 18, form II.; *If by demise add declaration of
 trust of nominal reversion for mortgagee[s]*, p. 34; *Covenant
 to insure and repair if appropriate (c)*, p. 44, or *clause
 supplemental to statutory provisions for insurance*, p. 46;
*[Power of sale, p. 27, unless omitted in reliance on the Act,
 see p. 22, note, or clause modifying statutory power, p. 31]*;
Mortgagee's indemnity clause, p. 61; *In mortgage to trustees
 add, if thought proper, joint account clause*, p. 39, and *clause
 as to devolution of powers*, p. 68.

IN WITNESS, &c.

VI.

DEED of STATUTORY MORTGAGE *under the 26th section* PREC. VI. *of the CONVEYANCING ACT, 1881 (d).*

THIS INDRE made by way of statutory mtge, the —
 day of —, 18—, BETWEEN A., *mortgagor*, of the one pt,

(c) This covenant must of course conform to the provisions (if any) for insurance in the lease. See p. 44, notes.

(d) This is the form of mortgage given in the 3rd Sched. to the Conv. Act, 1881, which, besides its operation in implying powers of sale, &c., and mortgage covenants for title under the Act, has also a special operation by virtue of under s. 26, which enacts that there shall be deemed to be included and shall be implied, in a mortgage of freehold or copyhold land made in the form in that schedule, a covenant with the mortgagee, by the person expressed to convey as mortgagor, for payment of the mortgage money with interest at the stated rate, and for payment of interest after default, and the usual proviso for redemption. The mortgage may be made with such variations and additions as circumstances may require. The use of the statutory form of mortgage

PREC. VI. and B., *mortgagee*, of the other pt, WITNETH, that in conson of the sum of £—— now paid to A. by B., of which sum A. hby acknowledges the reet, A. as mtgor and as beneficial owner liby conveys to B, *Parcels*, To HOLD (b) TO AND TO THE USE of B. in fee simple for securing paymt on the —— day of ——, 18——, of the principal sum of £—— as the mtge money, with interest thereon at the rate of —— per cent. per annum.

IN WITNESS, &c.

VII.

PREC. VII.

MORTGAGE IN FEE of FREEHOLDS by ONE MORTGAGOR to ONE MORTGAGEE (c). PROVISIONS for REDUCTION of INTEREST on *punctual payment and for continuance of loan for a TERM CERTAIN*. PROVISIONS for INSURANCE against fire. POWER of SALE. POWER to MORTGAGOR and to MORTGAGEE when in possession to grant LEASES. APPOINTMENT of a RECEIVER. VARIATIONS where the principal is to be repaid by INSTALMENTS, where the security extends to FUTURE ADVANCES (d), and where the

would enable the short statutory forms of transfer in the 2nd part of the schedule (see *infra*) to be used ; but the inconvenience attending the use of statutory forms is such, and the advantage so inconsiderable, that the form is not likely to be largely used.

(b) For leaseholds say, "To HOLD unto the sd B., his exs, ads, and assigns, henceforth for all the residue now unexpired of a term of —— years granted by an indre of lease dated, &c., and expd, &c. [if by demise add, 'except the last day of such term'], for securing, &c., as in text ;" if by demise add, *declaration of trust of nominal reversion*, p. 84.

(c) See the notes to Precedent I.

Effect of

(d) Although the security extends to future advances, the mortgagee cannot

STATUTORY POWERS OF SALE and LEASING and AP- PREC. VII.
POINTING a RECEIVER are relied on with modifications.

PARTIES, A., mortgagor, 1; B., mortgagee, 2; [C., receiver, 3]: *Recite title of mortgagor to, "the hereds hby mtged," as in a conveyance on sale, Vol. I., p. 329 et seq.; Agreement for loan, p. 1, form I., or if the security extends to future advances, p. 3, form IV.; General agreement to enter into covenants, p. 8, form XXII.; NOW THIS INDRE WIT-* Wit-
NETH, that in psuance of the sd agreemt and in conson of the sum of £—— now paid to the sd A. by the sd B., the nesseth.
rect, &c., covenant to pay principal, p. 9, or if the security Covenant
extends to future advances, p. 10, form III., and to pay interest for pay-
after default, p. 10, form II., or p. 11, form V., the interest in ment.
each case being made payable at the higher rate; AND THIS Also wit-
INDRE ALSO WITNETH, that in further psuance of the nesseth.
sd agreemt and for the conson afsd the sd A., as beneficial Grant.
owner (see p. 74, note), doth hby grant unto the sd B., his
hrs and assigns, *Parcels; see Vol. I., p. 344, omitting the*
general words and estate clause, see Vol. I., pp. 357, 359;
Habendum, p. 15 (e); Proviso for redemption, p. 17; or if
the security extends to future advances, p. 19, form VI.;
Proviso for reduction of interest on punctual payment, p. 34;

safely make any after notice of a subsequent incumbrance, unless the second
subsequent incumbrancer has agreed in the most express terms that such mortgage
advances may be made, see *Hopkinson v. Rolt*, 9 H. L. C. 514; *Dawn v. City* on future
of London Brewery Co., L. R. 8 Eq. 155; *Menzies v. Lightfoot*, L. R. 11 Eq. advances
459; 2 Dav. Prec., part 2, p. 380, note. by first
mortgagee.

Where the mortgage is to secure future advances, the *ad valorem* stamp Stamp on
should be sufficient to cover the total sum which is likely to be advanced: see security for
the Stamp Act, 1870, s. 107; 2 Dav. Prec., part 2, pp. 257, 260, note. future

(e) Where the mortgage reserves express leasing powers to the mortgagor, advances.
the following form of habendum is sometimes used, though it is clearly un- Special
necessary: "to the sd, mortgagee, and his hrs, To THE USE and habendum
intent that the sd, mortgagor, his hrs and assigns, may exer- giving
cise the powers of leasing hinafter contd, and subj to such power to
powers, and to any leases granted in psuance thof, To THE mortgagor
USE of the sd, mortgagee, his hrs and assigns, &c." to lease.

PREC. VII. *For continuance of loan for a term certain, p. 35; And if so intended, proviso that mortgagor shall not pay off for a term certain, p. 35; [or, Proviso for payment by instalments, p. 35]; If buildings form a material part of the security, add covenant to insure and repair, p. 44, or clause supplemental to statutory provisions for insurance, p. 46; [Power to mortgagor, and if desired to mortgagee when in possession, to grant leases, p. 48; or, clause restricting statutory power to grant leases, p. 50]; [Power of sale, p. 22, unless omitted in reliance on the statute, or clause modifying statutory power of sale, p. 31]; Mortgagee's indemnity clause, p. 61; [Appointment of receiver, p. 54; or the short form by reference to the statute, p. 58.]*

IN WITNESS, &c.

VIII.

PREC. VIII. **MORTGAGE of FREEHOLDS and COPYHOLDS. A PRIOR MORTGAGEE of the FREEHOLDS joining to POSTPONE his Security (f).**

PARTIES, A., mortgagor, 1; B., prior mortgagee, 2; C., mortgagee, 3. Recite mortgage by A. to B. of freeholds setting out the conveyance and proviso for redemption, Vol. I., p. 320; Admission of A. to copyholds, Vol. I., p. 319; Agreement for loan from C. to A., p. 1; AND WHAS the sd B. has at the request of the sd A. agrd to postpone his afsd secy to the secy intd to be hby effected in mner hinafter appearing; First testatum as in Precedent I., Covenant by A. for payment, p. 9, and interest after default, p. 10; AND THIS INDRE ALSO WITNETH that in further psuance of the sd agreemt, and for the conson afsd, the sd B. as mtgee (g) doth hby at the request of the sd A. grant and

Recitals.

**Wit-
nesseth.
Also wit-
nesseth.**

(f) As to the risks incident to a second mortgage, see 2 Dav., Prec. pt. 2, p. 251, Elph. Introd. Conv. 148; and as to the consolidation of mortgages, see *ante*, p. 62, note.

(g) See p. 74, note.

rele (b), and the sd A. as beneficial owner (c) doth hby PARC. VIII.
grant and confirm unto the sd C., his hrs and assigns, Grant.
Parcels, Vol. I., p. 344, omitting general words and estate
clause, see Vol. I., pp. 357, 359, notes, Habendum to C. in
fee, p. 15, discharged from the sd sum of £——, the prior
mortgage debt, and all interest due and to grow due for the
same and every pt thof resply, and from all claims and
demands under or by virtue of the hinbefore recited indre of
the —— day of ——, but subj to the proviso for re- Proviso for
demption hinafter contd: Proviso for redemption, p. 17, redemp-
the reconveyance to be, “to the use of the sd B., his hrs and tion.
assigns, or as he or they shall direct, subj to such right or
equity of redemption as the same premes would if these
presents had not been executed, have been for the time
being subj to by virtue of the hinbefore recited indre of the
—— day of —— on paymt of the monies thby secured,
and with the same power of sale and other powers and
authorities in all respects as would have been subsisting, or
might have been exercised, if these presents had not been
executed;” AND THIS INDRE ALSO WITNETH Further
that in psuance of the sd recited agreemt, and for the conson witnessth.
afsd, Covenant by A. to surrender copyholds to the use of C.
subject to redemption as in Precedent II., p. 76 (d); Covenant
to insure and repair if appropriate, p. 41, or clause supple-
mental to the statutory provisions as to insurance, p. 46;
[Power of sale, p. 22, the surplus proceeds of sale of the free-
holds being payable, “unto the sd B., as such mtgee as afsd,
his exs, ads, or assigns, whose rect shall be a sufficient
discharge for the same, or if he or they shall so direct, unto
the sd A., his hrs or assigns;” or, if the statutory power of

(b) If the prior charge were equitable only, it would be sufficient to insert a clause postponing it as in Precedent XI.IV, *infra*, in lieu of the prior mortgagee joining in the conveyance.

(c) See p. 74, note.

(d) If it were not for the spécial form of the proviso for redemption of the freeholds in this case, arising from the existence of the mortgage to B., the covenant would be to surrender the copyholds subject to redemption as in form v., p. 19.

PREC. VIII. *sale is relied upon, insert a clause modifying it in that respect, similar to form IX., p. 32]; Mortgagee's indemnity clause, p. 61.*

IN WITNESS, &c.

IX.

PREC. IX.

SECOND MORTGAGE of COPYHOLDS and renewable LEASEHOLDS (a). A SURETY joining to covenant for PAYMENT of principal and interest (b). VARIATIONS where the mortgage extends to FURTHER ADVANCES (c).

PARTIES, A., mortgagor, 1; B., surety, 2; C., mortgagee, 3; Recite the lease as in a conveyance on sale, Vol. I., p. 325, setting out the parcels and covenant for renewal; The devolution, if any, of title to A., Vol. I., p. 326; The prior mortgage, p. 4, setting out the assignment of the leaseholds, subject to redemption, and the covenant to surrender the copyholds; Conditional surrender of the copyholds, p. 5; Agreement for loan, p. 1, or for further advances, p. 3; Agreement for surety to join, p. 3; NOW THIS INDRE WITNETH, consideration, receipt, joint and several covenant by A. and B. for payment, p. 10, form III., or for further advances, IV.; insert the variations in forms IV. and v., pp. 10 and 11, mutatis mutandis; PROVD ALWAYS that

Witness-
eth.

(a) Renewable leaseholds should be mortgaged by assignment, not by demise. In the case of ordinary leaseholds, if the first mortgage is by demise there is no objection to a second mortgage being also by demise. See *Dav. Prec.*, vol. II., pt. 2, p. 444, note.

(b) As to the law of suretyship, see the notes to *Dering v. Winchelsea*, 1 Wh. & Tu. L. C. Eq. and to *Rees v. Berrington*, 2 *id.*; *Dav. Prec.*, vol II., pt. 2, p. 503, note, p. 597, note. As to the rights of the surety where further advances are made, see *Forbes v. Jackson*, 19 Ch. D. 615.

(c) As to securities for further advances, see p. 82, note.

the sd, *surety*, his exs or ads, shall not be liable under the covenant or covenants hinbefore contd to pay a larger sum in the whole in respect of principal monies and interest taken togr than the sum of £——, with interest on such sum at the rate afsd from the time of demand of paymt being made on the sd, *surety*, his exs or ads, until paymt; AND THIS INDRE ALSO WITNETH that in further psuance of the sd agreemt, and for the conson afsd, the sd A., as beneficial owner (d), doth hby assign unto the sd C., his exs, ads, and assigns, *leasehold parcels by reference, Vol. I., p. 347*, togr with all such right to the renewal of the sd lease of the —— day of —— as is subsisting by virtue of the covenants and provons therein contd or otherwise," *omitting general words and estate clause, see Vol. I., pp. 357, 359, notes; habendum, subject to the prior mortgage, p. 16; PROV'D ALWAYS*, and it is hby agrd, that if the sd, *mortgagor*, his hrs, exs, ads, or assigns, or the sd, *surety*, his exs or ads, shall, &c., *continue proviso for redemption for leaseholds, p. 19, form VI., adding at the end, "subjt nevertheless to the rights of the sd, surety, his exs or ads, in case the monies hby secured, or any pt thof, shall be paid by him or them;"* AND THIS INDRE ALSO WITNETH that in further psuance of the sd agreemt, and for the conson afsd, the sd A. as beneficial owner (d) doth hby, &c., *covenant to surrender copyholds, p. 76, parcels, p. 344, omitting general words and estate clause, To THE USE of the sd C., his hrs and assigns, condition for making void the surrender, p. 19, form V., "and subjt also to the sd conditional surrender of the —— day of —— and the monies thby secured:" Declaration of trust of copyholds till surrender, p. 33, "and subjt also to the sd conditional surrender, &c.," as above, and power of attorney, p. 33; Covenants by A. for renewal, &c., p. 47, in the clause as to assigning the renewed lease to the mortgagee say, "subjt to such*

PREC. IX.
Proviso
limiting
liability of
surety.

Also wit-
nesseth.

Assign-
ment.

Also wit-
nesseth.

Covenant
to sur-
render
copyholds.

PREC. IX. equity of redemption as shall then be subsisting by virtue of these presents, and subjt to the sd indre of mtge of the — day of —, and the monies thby secured, and that until such assignmt shall be made the sd A., his exs, ads, and assigns, shall stand possessed of the renewed lease subjt to the sd indre of mtge of the — day of —, and the monies thby secured in trust, &c.,” *in the power to the mortgagee to obtain a renewal say*, “in his or their own name or names, or in the name or names of the pson or psons then entitled to the monies secured by the sd indre of mtge of the — day of — or otherwise;” *To insure and repair if applicable*, p. 44, *or clause supplementing statutory power of insurance*, p. 46; [*Power of sale*, p. 29, *form IV.*, *unless omitted in reliance on the statute*, see p. 22, *note*;] [*Clause as to surplus proceeds of a sale by first mortgagee*, p. 32;] *Mortgagee's indemnity clause*, p. 61; *Proviso as to primary liability between A. and B.*, p. 39, *form xv.*; *Proviso that C. shall not be affected by such declaration*, p. 39, *form xvi.*; *Declaration that B. shall be liable as principal debtor*, p. 40, *form xvii.*

IN WITNESS, &c. (e).

X.

PREC. X. **MORTGAGE in FEE by TWO PERSONS under a joint POWER of APPOINTMENT, subject to prior CHARGES.**
The PRINCIPAL to be repaid by INSTALMENTS.

PARTIES, A. and B., *mortgagors*, 1; C., *mortgagee*, 2;
Recitals. WHAS by an indre dated, &c., and expd, &c., the hereds
Settlement. hinafter appointed and assured, togr with other hereds, were assured and limited subjt to certain annuities or rent-

(e) Notice to be given to the prior mortgagee, see 2 Dav. Prec. pt. 2, p. 232. As to the risks incident to a second mortgage, see the references above, p. 84, *note (f)*.

charges of £ — and £ —, and the powers and remedies and terms of years for securing the same therein mentd, and to an indre of mtge dated, &c., and expd, &c., for securing the sum of £ — and interest, or, "subjt to the charges and incumbrances which are specified in the schedule hto," to such uses, &c., *setting out fully the joint power of appointment to A. and B.*, and in default of and subjt to any such appointmt to the use of the sd A. and his assigns during his life, without impeachmt of waste, with remainder to the use of the sd B. and his assigns during his life, without impeachmt of waste, with divers remainders over; *Agreement for loan to A. and B.* p. 1. NOW THIS INDRE WITNETH, &c., *Consideration, receipt; Joint and several covenant by A. and B. for payment*, p. 10, *form III.*; and interest after default, p. 10: AND THIS INDRE ALSO WITNETH that in further psuance of the sd agreemt and for the conson afsd, the sd A. and B. as beneficial owners (f) in exercise of the sd recited power, and of every or any other power in this behalf enabling them, do hby appoint, and by virtue of their respive estes and interests and by way of further assurance do hby grant and confirm unto the sd C., his hrs and assigns, *Parcels, Vol. I.*, p. 344; *omitting general words and estate clause, see Vol. I.*, pp. 357, 359, *notes; Habendum to B. in fee subject to redemption*, p. 15, *substituting for the words in note*, "subjt to the sd annuities or rent-charges of £ — and £ —, and to the powers and remedies and terms of years for securing the same, and to the sd mtge of the — day of —, and the sum of £ — thby secured, and the interest now due and henceforth to become due for the same," or, "subjt to the charges and incumbrances specified in the schedule hto;" *Proviso for redemp-*

PRINC. X.
—
Witnesseth
covenant
for pay-
ment.
Further
witnesseth.
Appoint-
ment and
grant.
Haben-
dum.

(f) This implies absolute covenants for title by each mortgagor as to the entirety of the property, see p. 64, note. If express covenants were inserted they should be joint and several; the necessary modifications for two mortgagors would be readily made.

PREC. X. tion, p. 21, form XI., "subjt to the sd prior charges or in-
Proviso for cumbrances hinbefore mentd or referred to, and to which the
redemp- mtge hby made is hinbefore expd to be subj, or such of
tion. them as shall be subsisting;" *Proviso for payment by in-*
Payment stalments, "by the sd A. and B., or either of them, their
by instal- or either of their hrs, appointees, exs, ads, or assigns," p. 35,
menta. form VI., with the addition of form IX., p. 37, see also forms
 VII. and VIII.; *Joint and several covenants by A. and B., for*
insurance and repair if appropriate, p. 44, mutatis mutandis,
or clause supplementing statutory power of insurance, p. 46;
Power of [Power of sale, p. 22, "without any further consent of the sd
sale. A. and B., or either of them, their or either of their hrs, ap-
 pointees, exs, ads, or assigns, or any pson or psons
 interested in the equity of redemption of the sd mtged
 premes," substituting in the first clause containing the power to
 sell for the addition in note (b), "and so that every or any sale
 under the power hinbefore contd may be made either subj to
 or discharged from all or any pt or pts of the sd prior
 charges and incumbrances subj to which the sd premes are
 hby mtged, and in the last-mentd case upon the terms of
 the same, or any of them, or any pt or pts thof resply, being
 paid off or pchased out of the pchase-money of the
 hereds sold, or being provided for by paymt into court under
 the statute in the behalf (g) or upon the terms of any invest-
 mts being made [or of any governmt or other life annuity or
 annuities being pchased] out of such pchase-monies, or
 upon any other terms of indemnity against the sd charges
 and incumbrances, or any of them, or any pt or pts thof
 resply, which the sd C. his exs, ads, or assigns, shall think
 fit," in the clause as to the events in which the power may be
 exercised, say, "notice in writing to the sd A. and B., or one
 of them, or their respive hrs, appointees, exs, ads, or assigns,
 or some or one of them, or some other pson or psons
 interested in the equity of redemption of the sd intged
 premes," the ultimate trust of the purchase-money will be,

Subject to
 or dis-
 charged
 from prior
 incum-
 brances.

(g) See the Conv. Act, 1881, s. 5.

"for the pson or psons for the time being entled to the equity of redemption of the said mtged premes according to his or their respive estes, rights, or interests in the same;" or the power of sale may be omitted in reliance on the statute, form VIII., p. 31, being inserted, see p. 24, note;] [Clause as to surplus proceeds of a sale by prior mortgagees, p. 32 ;] Mortgagee's indemnity clause, p. 61.

PREC. I.

IN WITNESS, &c., (h).

[The Schedule.]

XI.

MORTGAGE by HUSBAND and WIFE married BEFORE the MARRIED WOMEN'S PROPERTY ACT, 1882, of the FREEHOLDS of the latter to secure the HUSBAND'S Debt. VARIATIONS where the EQUITY of REDEMPTION is limited to the HUSBAND (a).

PREC. XI.

PARTIES, A., and B., his wife, 1 ; C., mortgagee, 2. Recital of seisin in fee of A. and B. in right of the latter as in a con-

Recitals.

(A) See p. 88, note.

(a) By the Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, which repeals (s. 22) the Married Women's Property Acts, 1870 and 1874, a most important change has been effected, as from the 1st Jan. 1883, the date of the commencement of the Act, in the legal status of married women.

Married Women's Property Act, 1882.

By s. 1 (i.) a married woman is (in accordance with the provisions of the Act) made capable of acquiring, holding, and disposing by will, or otherwise, of any real or personal property, (including by s. 24, choses in action), as her separate property, in the same manner as if she were a *feme sole*, without the intervention of a trustee. The effect of this section is to give to every married woman, whether married before or after the Act, the fullest capacity of acquiring and disposing of any property as her separate property as if she were a *feme sole*, so as entirely to remove her common law disabilities in this respect ; but the question whether in any particular case her property is to be deemed to be her separate property is dependent on ss. 2 and 5 of the Act.

Power to acquire and dispose of property.

By s. 2, every woman who marries *after* the commencement of the Act is to be entitled to hold as her separate property, and to dispose of in manner aforesaid, all real and personal property which belongs to her at the time of marriage, or is acquired by or devolves on her after marriage, including

Women marrying after the Act.

PREC. XI. *veyance on sale, Vol. I., p. 332; agreement for loan to A., p. 1;*
 [AND WHAS the sd A., and B. his wife are desirous and have

Women
marrying
before the
Act.

her separate earnings; and by s. 5, every woman married *before* the commencement of the Act is to be entitled to hold and dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder accrues *after* the commencement of the Act, including her separate earnings; but (by s. 19) these provisions are not to affect any settlement, or any restriction on anticipation.

Settle-
ments not
affected.

The old law as to a married woman's power of disposing of her property is thus entirely superseded as to all property which is by the Act made her separate property, as to which she is enabled to dispose of both the legal and equitable estate as a *feme sole* (subject to any settlement or restraint on anticipation); but the Act does not remove the disabilities of a woman married *before* its commencement as regards her power of disposing of property not settled to her separate use to which she is entitled *at the time* of its commencement, or affect the marital rights of the husband in respect of such property; and the old law remains to that extent in force.

Old law in
force as to
property
acquired
by married
woman
before the
Act.

As regards property settled to the separate use of a married woman under the old law, she has the same power of disposition as if she were a *feme sole*, so far as the equitable estate is concerned, *Taylor v. Meads*, 4 De G. J. & S. 597; but this does not extend to any legal estate or interest which is vested in her, unless (as regards freeholds) she has a power of appointment operating under the Statute of Uses (see Vol. I., p. 443, note (a)); and this disability does not appear to be removed by the late Act, so that a deed acknowledged will still be necessary in that case (*i.e.*, as to property settled on a married woman prior to 1883), where it would have been before the Act.

Power of
disposition
over
property
settled to
separate
use.

Acknow-
ledgment
of deeds.

As to the acknowledgment of deeds by married women where the old law remains applicable, see the Conv. Act, 1882, s. 7, which substitutes one commissioner for two, and does away with the filing of a certificate of the acknowledgment; see Vol. I., Appendix.

Estate
by the
curtesy,
&c.

Assuming that the Married Women's Property Act, 1882, does not deprive the husband of his estate by the curtesy in the wife's separate freeholds, or his marital right to her leaseholds or personalty after her death, in the absence of any disposition by her to the contrary (see as to curtesy under the old law, *Cooper v. Macdonald*, 7 Ch. D. 288; *Eager v. Furnivall*, 17 Ch. D. 115; and as to personalty, *Molony v. Kennedy*, 10 Sim. 254); her disposition would of course supersede his right, so that his concurrence in the mortgage is not necessary on this account.

Powers of
married
women to
contract.

The disabilities of married women (whether married before or after the Act) as regards *contracting*, are also removed by the Married Women's Property Act, 1882, which enacts (s. 1, sub-s. 2) that a married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued as if she were a *feme sole*; and by s. 1 (3) every contract entered into by her is to be deemed to be entered into with respect to and to bind her separate property

agrd that the said hereds and the equity of redemption thof subj't to the mtge intended to be hby made shall be limited and assured to the use of the sd A., his hrs and assigns, in mner hinafter expd, to the intent that the same may become his and their absolute ppty, freed and for ever discharged from all right, title, interest, or claim of the sd

PREC. XI.
Agreement that equity of redemption should be limited to husband.

unless the contrary be shown ; and by s. 1 (4) is to bind not only the separate property which she is entitled to at the date of the contract, but also all separate property which she may thereafter acquire (which is an extension of the old law, under which the power of a married woman to bind her separate estate in equity was confined to her existing property, see *Pike v. Fitzgibbon*, 17 Ch. D. 454 ; *Smith v. Lucas*, 18 Ch. D. 531), subject (s. 19) to any restriction on anticipation affecting her ; and by s. 1 (5) a married woman carrying on trade separately from her husband is in respect of her separate property to be subject to the bankruptcy laws as if she were a *feme sole*.

The contract of a married woman under the Act is enforceable by or against her, as if she were a *feme sole*, without joining her husband (see s. 1 (2)) ; but she cannot be made bankrupt unless she is carrying on a separate trade.

Contracts of married women, how enforced.

It is clear from the whole scope of the Act (see especially ss. 13, 20, 21, and compare the provisions of the repealed Acts) that the expression "separate property," as used in the clauses relating to the contracts of a married woman, must be interpreted to include not merely property which is by the Act made her separate property, but also any property settled to her separate use under the old law ; so that the effect of the contracts of a married woman entered into after the Act on property so settled will be regulated by the Act, and the old law on this subject (as to which, see 3 Dav. Prec., p. 93, note) is superseded so far as regards future contracts ; but questions may arise as to the effect of the Act where a married woman has entered into contracts before as well as since the Act binding such property.

Effect of her contracts.

Although the contract of a married woman will bind her separate estate under the late Act without being so expressed (see s. 1, sub-s. 3), it is desirable where it is also intended to affect any property settled to her separate use under the old law, that the intention should be expressed.

The precedent in the text is for a case in which the wife's power of disposition is governed by the old law, *i.e.*, where she was married, and her title to the property accrued, before 1883. But although the old law applies as regards the wife's power of disposition, the new law applies as regards her power of contracting, and she may consequently enter into all the usual mortgage covenants, whether for payment, for title, or otherwise, as if she were a *feme sole*, to the extent of her existing or after-acquired separate property ; and she is in this precedent made so to covenant.

The deed must be acknowledged by the wife.

The next precedent is of a mortgage by a married woman as a *feme sole* under the new law.

PREC. XI. B., her heirs or assigns (c)]: NOW THIS INDRE WIT-
 NETH that in psuance of the sd agreemt, *Consideration*,
 p. 8, form III. ; *Joint and several covenants by A. and B. for*
 Also wit- *payment*, p. 10, form III. : AND THIS INDRE ALSO
 nesseth. WITNETH that in further psuance of the sd agreemt and
 for the conson afsd, the sd B. as beneficial owner (d), with
 the concurrence of the sd A., doth hby grant, and the sd A.
 Grant. as beneficial owner (d) doth hby grant and confirm unto the
 sd C., his hrs and assigns, *Parcels, Vol. I.*, p. 344 ; *omitting*
general words and estate clause, see Vol. I., pp. 357, 359, *notes* ;
 Proviso for *Habendum*, p. 15 ; PROVD ALWAYS, and it is hby agrd that if
 redemp- the sd A. or the sd B. his wife or their respive hrs, exs,
 tion. ads, or assigns, shall on the — day of — next pay, &c.,
continue proviso for redemption, p. 17, “at the cost of the
 pson or psons requiring the same reconvey the sd premes
 hby mtged to the use of the sd B., her hrs or assigns, or as
 she or they shall direct [to the use of the sd A., his hrs
 or assigns, or as he or they shall direct, to the intent,” &c.,
as above in the recital] ; *Add a declaration if appropriate that*
A. or B. and the mortgaged premises, according to the inten-
tion, shall be primarily liable to the payment of the mortgage
money, p. 39, forms XIV. or XV., *mutatis mutandis* ; *and*
proviso that this declaration shall not affect the mortgagee,
 p. 39, form XVI. ; *Joint and several covenants by A. and B. to*
insure and repair if appropriate, p. 44, *or clause supplementing*
statutory power of insurance, p. 46, *mutatis mutandis* ; [*Power*
of sale, p. 22, *unless omitted in reliance on the statutory*
power, see p. 22, note, the power being made exercisable,

(c) As to the reason for inserting this express recital of the intention, see *Jackson v. Innes*, 1 Bligh, 104, *Re Belton*, L. R. 12 Eq. 553, 2 Dav. Prec., pt. 2, p. 40. The transfer of the equity of redemption to the husband will not increase the stamp, see the Stamp Act, 1870, s. 111 ; 2 Dav. Prec. pt. 2, pp. 258, 587, *notes*.

(d) This, by the Conv. Act. 1881, s. 7 (3), implies covenants for title by the husband as to the acts of himself and his wife, &c., see Vol. I., p. 367, *note* ; and by the wife, as a *feme sole*, in respect of her separate property, see last page, *note*.

“ without any further consent on the pt of the sd A. and B. or either of them, their or either of their hrs, or assigns,” PREC. XI.
and the notice prior to the exercise of the power being required to be given, and the surplus proceeds of sale made payable to,
“ the sd B., her hrs or assigns,” if the equity of redemption is limited to her, or, “ to the sd A., his hrs or assigns,” if the equity of redemption is limited to him] ; Mortgagee's indemnity clause, p. 61 : AND THE sd B. doth hby declare that all the covenants on her pt hinbefore contd are intended to operate in relation to and to bind all separate este and ppty to which she is now or may hereafter become entled at law or in equity, or have power to dispose of or bind, whether under the provons of the Married Women's Property Act, 1882, or otherwise howsoever.

Declaration
as to wife's
covenants
binding her
separate
pro-
perty.

IN WITNESS, &c.

XII.

MORTGAGE by a MARRIED WOMAN of LEASEHOLDS PREC. XII.
which are her SEPARATE PROPERTY under the MARRIED WOMEN'S PROPERTY ACT, 1882. VARIATIONS, where the HUSBAND joins to CONFIRM the WIFE'S TITLE and to COVENANT (a).

PARTIES, A., married woman, 1 ; [B., husband, 2 ;] C., mortgagee, 3. Recite lease, and assignment thereof to the

(a) See p. 91, note. Where the title of the wife (whenever married), arose after 1882, her power of disposition is absolute, and her husband's concurrence is unnecessary ; but his confirmation may be desirable in case of the possibility of his having a lien by reason of the property having been acquired with his money, or of some subsequent disposition by the wife in his favour ; though an adverse equity of this nature would not prevail against the mortgagee if he gets the legal estate and the deeds and there is nothing to put him on enquiry. In any case the husband, if willing, should generally be made a party to covenant, even where the loan is made to the wife.

PREC. XII. *wife since 1882, as in a conveyance on sale, see Vol. I., p. 325, the consideration money for the assignment being stated to be paid, "out of monies belonging to the sd A., as her separate ppty independently of her sd husband" (b); Agreement for loan to A. or B. as the case may be, p. 1; [Agreement of B. to join, p. 3;] NOW THIS INDRE WITNETH, &c., consideration, p. 8, form I., covenant by A. for payment, p. 9, and interest after default, p. 10, [or joint and several covenants by A. & B. for payment, p. 10, form III.;] AND THIS INDRE ALSO WITNETH, that in psuance, &c., and for the conson afsd the sd A. as beneficial owner (c), doth hby demise, [and the sd B. as beneficial owner (c) doth hby confirm] unto the sd C., his exs, ads, and assigns, *Parcels by reference to lease, Vol. I, p. 347, omitting general words and estate clause, see Vol. I., pp. 357, 359, notes, Habendum, p. 16; PROVD ALWAYS, and it is hby agrd that if the sd A., her hrs, exs, ads, or assigns [or the sd B., his hrs, exs, or ads], shall, &c., proviso for redemption and reconveyance to A., "as her separate ppty independently of her sd husband," p. 18, form II.; Declaration of trust by A. of nominal reversion and power of attorney, p. 34; [If B. joins, add declaration, if appropriate, as to primary liability to the mortgage debt, &c., as in last Precedent;] Covenant by A. [or joint and several covenants by A. and B.] to insure and repair if appropriate (d), p. 44, or clause supplementing statutory power of insurance, p. 46, mutatis mutandis;**

Wit-
nesseth.
Covenant
for pay-
ment.
Also wit-
nesseth.
Demise.
Proviso for
redemp-
tion.

(b) It will be better to show by the recitals that the wife's title accrued after 1882, either by reciting the deed or will under which it arose, or by a simple recital of her seisin or ownership referring to the deed or will, which may run as follows:—

"Whas the sd A. is seised or entled in fee simple in possession, or, 'is possessed or entled,' as her separate ppty independently of her sd husband, of or to the hereds hby assured, free from incumbrances, under an indre, &c., or, 'the will of X.,' &c."

(c) This implies the same covenants as the last Precedent, see p. 92, note.

(d) See p. 81, note (c).

Recital of
wife's title
to her
separate
property.

[*Power of sale*, p. 27, unless omitted in reliance on the statute, see p. 22, note, the surplus proceeds being made payable to A., "her exs, &c., as her separate ppty, independently of her sd husband";] *Mortgagee's indemnity clause*, p. 61; *Clause as to A.'s covenant binding her separate estate as in last Precedent*, p. 95. PREC. XII.

IN WITNESS, &c.

XIII.

MORTGAGE of FREEHOLDS, COPYHOLDS, and LEASE- PREC. XIII.

HOLDS held under several leases, by the TRUSTEES of a WILL (a). PROVISIO limiting the LIABILITY of the TENANT for LIFE, who COVENANTS for payment of the mortgage MONEY, as between HIMSELF and the ESTATE. POWERS of LEASING reserved to the DONEE of the POWERS of LEASING contained in the WILL by reference to such powers (b).

PARTIES, A. and B., trustees, 1; C., tenant for life, 2; D., E., and F., mortgagees, 3. *Recite leases*, Vol. I., p. 325; *Recitals*. And devolution (if any) thereof to X., Vol. I., p. 326; *Will of X.*,

(a) Powers of mortgaging settled estates for some purposes are given to tenants for life under settlements, past or future, by the Settled Land Act, 1882; see the next Precedent and the note thereto. It is assumed that the mortgaging powers in this Precedent are for purposes other than those provided for by the Act, in which case they are kept alive by the Act, ss. 56 and 57; if they were for the same purpose, the consent of the tenant for life would, under s. 56 (2), be necessary to their exercise. Powers of mortgaging under Settled Land Act, 1882.

(b) The powers of sale and leasing in the will, as well as those vested in the tenant for life by the Settled Land Act, 1882 (see s. 20 (2) ii.), would be subject to the mortgage, unless expressly kept alive so as to override it; this is done in this Precedent as regards the leasing powers in the will, and it might also be done as regards those in the Act if the power to take a premium were excluded. The Conv. Act, 1881, s. 18, giving leasing powers to mortgagors in possession, is apparently not applicable.

PREC. XIII. *devising his freeholds to uses in strict settlement, under which C. is tenant for life, noticing shortly the powers in the will for granting leases, and setting out a power to the trustees to raise money by mortgage in fee, with or without power of sale, with the consent of the tenant for life, if of full age, for certain purposes, and clause providing that the mortgagee shall not be bound to see whether the money is wanted, or whether more than enough is raised, devise of copyholds and bequest of leaseholds to A. and B. upon trusts corresponding to the uses of the freeholds, appointment of A. and B., executors ; Death of X., without having revoked his will and probate, Vol. I., p. 383 ; That X. died, "seised of, or entld to the freehd hereds intd to be hby mtged for an este of inheritance in fee simple, and seised of or entld to the copyhd or customaryhd hereds intd to be hby mtged for an este of inheritance to him and his hrs, according to the customs of the several manors of which the same are resp'y holden ;"*

Agreement for loan. AND WHAS the sd A. and B. have agrd, at the request of the sd C., and in exercise of the sd recited power, to borrow the sum of £——, and the sd D., E., and F., have agrd to advance the same out of monies belonging to them on a joint account upon having the repaymt thof, with interest at the rate hinafter mentd, secured in mnner hinafter appearing : NOW THIS INDRE WITNETH, that in conson of the sum of £——, upon the execution of these presents, paid by the sd D., E., and F., to the sd A. and B., at the request of the sd C., *receipt, covenant by C. to pay principal, p. 9 ; and interest after default, p. 10 ;* AND THIS INDRE

Witnesseth. ALSO WITNETH, that in further psuance of the sd agreemt, and for the conson afsd, the sd A. and B. as trees (c), at the request of the sd C., and in exercise of the

Further witnesseth.

(c) These words imply the usual covenant by A. and B. against incumbrances as to all the property, and full covenants by C. for title as to the freeholds and leaseholds, and also probably as to the copyholds, though there may be a doubt as to the effect in this respect of a covenant by one person that other persons shall surrender ; see as to implying covenants for title, p. 64, note.

sd power contd in the sd will of the sd X., and of every other power in this behalf enabling them, do hby ap- point (*d*), and the sd C. as beneficial owner (*e*), doth hby confirm, *Freehold parcels, see Vol. I., p. 344; omitting general words and estate clause, see Vol. I., pp. 357, 359, notes*, To THE USE of the sd D., E., and F., their hrs and assigns, subj to the provo for redemption hinafter contd : AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agreemt, and for the conson aforesd, the sd A. and B. as trees (*e*), at the request of the sd C., and in exercise of the sd power contd in the sd will, and of every other power, &c., do hby demise (*f*), and the sd C. as beneficial owner (*e*), doth hby confirm, unto the sd D., E., and F., their exs, ads, and assigns, *Leasehold parcels, by reference to leases, Vol. I., p. 347; omitting general words and estate clause, see Vol. I., pp. 357, 359, notes; Habendum, p. 16; Proviso for redemption, p. 18, form III., "if the sd A. and B., or other the trees or tree for the time being of the sd recited will, or the sd C., his hrs, exs, or ads, or any other pson or psons interested in the equity of redemption of the sd premes hby mtged, shall, &c." and the reconveyance to be, "at the cost of the pson or psons requiring the same," the freeholds to be reconveyed, "to the uses, upon the trusts, and with and subj to the powers and provons to, upon, with, and subj to which the same stood limited by virtue of the sd recited will immediately before the execution of these presents, or such of them as shall be subsisting," the leaseholds to be surrendered, "to the sd A. and B., their exs, ads, or assigns, or other the trees or tree for the time being of the sd recited will upon the trusts, and with and subj to the powers and provons to, upon, with, and subj to*

PREC. XIII.

Appoint-
ment of
freeholds.To use of
mortga-
gees.Further
witnesseth.Demise of
leaseholds.Proviso for
redemp-
tion.

(*d*) The trustees having no estate in the freeholds, the mortgage is made by appointment; if the legal estate were in the trustees, the mortgage would be in the usual form of a conveyance by grant.

(*e*) See note, last page.

(*f*) As to mortgages of leaseholds by demise, see above, p. 80, note.

PREC. XIII. which the same were held by virtue of the sd recited will immediately before the execution of these presents, or such of them as shall be subsisting ;" *Declaration of trust of nominal reversion of each lease*, p. 34 : AND THIS INDRE

Further
witnesseth. ALSO WITNETH, that in further psuance of the sd agreemt, and for the conson afsd, the sd A. and B., as trees (g), at the request of the sd C., and in exercise of the power contd in the sd will, and of every other power, &c., do hby resply covenant, and the sd C. as beneficial owner (g) doth hby also covenant with the sd D., E., and F., their hrs and assigns, that they, the sd A. and B., or the survivor of them, or his hrs, and all other necessary pties, if any, *rest of covenant to surrender, subject to redemption, as in Prec. II., p. 76 ; Declaration of trust of copyholds for mortgagees till surrender*, p. 33 ; [*Declaration that money belongs to mortgagees on a joint account*, p. 39 :] PROVID ALWAYS, and it is hby agd, that as between the sd C., his hrs, exs, and ads, and the sd mtgd hereds, the sd hereds shall be the primary secy for the monies hby secured, but this provo shall not affect the sd D., E., and F., their exs, ads, and assigns, or their right to resort to, and enforce their several secs and remedies for recovering the monies hby secured against the sd hereds or the sd C., his hrs, exs, and ads personally, in such order or mner as they may think fit ; *Covenant by A. and B. to insure and repair, if appropriate*, p. 44, or *covenant supplementing statutory power of insurance*, p. 46 ; PROVID ALWAYS, and it is hby agrd, that it shall be lawful for the sd C., or other the pson or psous who shall from time to time be the donee or donees of the

Covenant
to surren-
der copy-
holds.

Proviso as
to primary
liability of
mortgaged
premises.

Power of
leasing (h).

(g) See note (c), p. 98, *ante*.

Leasing
powers
kept alive.

(h) The leasing powers might be kept alive in equity as against the mortgagees by a mere declaration to that effect. The object of this formal power is to enable the donee to give the legal estate to the lessee by means of an appointment operating under the Statute of Uses ; but as copyholds and leaseholds are not within the Statute of Uses, a lease of them granted by the donee of the power without the concurrence of the mortgagees, would take effect in equity only, as against them, and a covenant by the mortgagees to concur in such leases is therefor added.

powers of leasing contd in the sd recited will at any time or times hereafter before the sd D., E., and F., their hrs, exs, ads, or assigns, shall have either sold or entered into possession of the whole of the sd premes hby mtged, or have foreclosed the equity of redemption thof, to exercise over the whole, or any pt thof which shall not have been sold, or entered into possession of, all or any of the sd leasing powers contd in the sd will in the same mner as if these presents had not been executed, and so that every such lease shall be binding on the sd D., E., and F., their hrs, exs, ads, and assigns, without their consent to or concurrence therein: *Covenant to deliver the counterparts of the leases to the mortgagees*, p. 49: AND the sd D., E., and F. do hby covenant with the sd A. and B., their hrs, exs, ads, and assigns, that they, the sd D., E., and F., their hrs, exs, ads, or assigns, will, at the request and cost of the donee or donees for the time being of the sd several powers of leasing contd in the sd will, concur in any and every such lease of the sd copyhd or leasehd premes hby mtged, or any pt or pts thof, for the ppose of giving the legal este in the demised premes to the lessee or lessees; [*Power of sale*, p. 29, *unless omitted in reliance on the statute*, see p. 22, *note*, (i), "without any further consent by any pson or psons interested in the premes, or the trees or tree for the time being of the sd will," in the *clause for protection of purchasers*, say, "the remedy of the psons or pson interested in the premes," the *surplus purchase monies to be paid to*, "the trees or tree for the time being of the sd will;"] *Mortgagee's indemnity clause*, p. 61.

PREC.
XIII.

Covenant
by mort-
gagees to
concur in
leases.

IN WITNESS, &c.

(i) Trustees with power to mortgage may give a power of sale to the mortgagee without express authority (*In re Chawner*, L. R. 8 Eq. 569; *Cruikshank v. Duffin*, L. R. 13 Eq. 555); and indeed the power of sale in the Conv. Act, 1881, s. 19, would apply to the case unless expressly excluded, which trustees are not bound to do; see s. 66.

XIV.

PREC. XIV.

MORTGAGE of SETTLED FREEHOLDS by the TENANT FOR LIFE for raising money required for ENFRANCHISEMENT, or for EQUALITY OF EXCHANGE or PARTITION, under the powers of the SETTLED LAND ACT, 1882 (a). VARIATIONS where the TENANT FOR LIFE covenants for PAYMENT.

PARTIES, A., tenant for life, 1; B. and C., trustees, 2; D., mortgagee, 3. Recite the settlement and events by virtue of which A. is tenant for life in possession, and B. and C. trustees with power of sale, of the "hereds hby mtged," or, "are trees of the sd indre of settlemt for the pposes of the Settled Land Act, 1882"; AND WHAS the sum of £—— is required for the enfranchisemt of certain copyhd hereds now vested in the sd B. and C. upon the trusts

Recitals.

Purpose for which loan required.

Agreement for loan.

Powers of mortgaging s. 2, or other limited owner as defined by s. 58, under any settlement, past or by tenants for life under the Settled Land Act, 1882. (a) Under the Settled Land Act, 1882, s. 18, a tenant for life, as defined by future, is empowered to raise money required for enfranchisement (i.e., of copyholds subject to the settlement, see s. 21 (v.)), or for equality of exchange or partition (see s. 3 (iii., iv.)), of the settled land, by mortgage thereof, or any part thereof, either in fee simple, or for other the estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise; and by s. 20 is empowered to convey the land to the uses and in the manner requisite for giving effect to the mortgage, and as to copyholds, see sub-s. 3; see also ss. 40, 54, protecting mortgagees dealing with the tenant for life in good faith, and s. 55. By s. 18 the money raised is to be capital money arising under the Act (as to which, see s. 2 (9)), and by s. 22 is to be paid either to the trustees of the settlement (as to whom, see s. 2 (8), and s. 38), whose receipt is a good discharge (s. 40), or into court, at the option of the tenant for life; but by s. 39 is not to be paid to fewer than two trustees unless this is authorised by the settlement. See also s. 45 as to giving notice to the trustees of the intention to make the mortgage. See further as to this Act, Vol. I. p. 835, note; p. 844, note; and *infra*, SETTLEMENTS.

The trustees are made parties to the mortgage in this case to acknowledge the receipt of the money; otherwise their concurrence would not be necessary. The recitals should show that the mortgagor is tenant for life or limited owner, and that the trustees are "trustees of the settlement," within the meaning of the Act.

of the sd settlemt, or as the case may be; AND WHAS the sd A., by virtue of the powers vested in him under the Settled Land Act, 1882, has determined to raise the sd sum for the ppose afsd, and the sd D. has agrd to advance the same upon having the repaymt thof, togr with interest thereon at the rate hinafter mentd secured in mner hinafter appearing; [*Recital as to muniments, Vol. I., p. 341;*] NOW THIS INDRE WITNETH that in psuance of the sd recited agreemt, and in conson of the sum of £—— now pd to the sd B. and C. as such trees as afsd, at the request of the sd A., by the sd D. (the paymt and rect whof in mner afsd is hby acknowledged by the sd A. and by the sd B. and C.) [*covenant by A. for payment of principal and interest after default, pp. 9, 10;* AND THIS INDRE ALSO WITNETH that in further psuance of the sd recited agreemt, and for the conson afsd], the sd A. as beneficial owner (*see p. 64, note*) by virtue of the powers vested in him under the Settled Land Act, 1882, and of every other power in this behalf him enabling, doth hby grant and convey unto the sd D., his hrs and assigns, *Par-* *Grant.* *cels, see Vol. I., p. 344, omitting general words and estate clause, see Vol. I., pp. 357, 359, notes; Habendum, p. 15; Proviso for redemption, p. 20, form x.; [Provision as to primary liability of mortgaged premises as in last Precedent, p. 100;] Covenant by A. to insure and repair if appropriate, p. 44, or covenant supplemental to the statutory power of insurance, p. 46; [Power of sale, unless omitted in reliance on the statute, see p. 22, note](b); Mortgagee's indemnity clause, p. 61; [Acknowledgment and undertaking by A. as to muniments, p. 62.]*

IN WITNESS, &c.

Schedule.

(b) The tenant for life, though in the position of a fiduciary owner (see the Settled Land Act, 1882, s. 53), may doubtless give a power of sale to the mortgagee. See p. 101, note.

XV.

PREC. XV.

MORTGAGE of a POLICY of LIFE ASSURANCE effected by the MORTGAGOR on his own life. VARIATIONS where the POLICY is effected in the NAME of the MORTGAGEE, and for SEVERAL MORTGAGEES.

Also witnesseth.

Assignment.
Policy.Haben-
dum.
To mort-
gagees.

PARTIES, A., mortgagor, 1; B. [C. and D.,] mortgagee[s],
 2. *Recite policy on life of A., p. 3, agreement for loan, p. 1, [or, where policy is effected in name of mortgagee, recite agreement for loan first]; First testatum as in Precedent I., p. 74; covenant by A. for payment, p. 9; and interest after default, p. 10: AND THIS INDRE ALSO WIT- NETH that in further psuance of the sd agreemt and for the conson afsd, the sd A. as beneficial owner (see p. 64, note) doth hby assign unto the sd B., his [B., C., and D., their] exs, ads, and assigns, ALL THAT the sd hinbefore recited policy of assurance on the life of the said A. [or, ALL THAT policy of assurance on the life of the sd A. effected in the — Assurance Society in the name of the sd A., dated, &c., numbered, &c., and under the annual premium of £—], and all monies assured by or to become payable under the sd policy, and the full benefit thof, omitting the estate clause, see Vol. I., p. 359 (c), To HOLD the same UNTO the sd B., his [B., C., and D., their] exs, ads, and assigns, subjt to the provo for redemption hinafter contd; Proviso for redemption, p. 18, form II.; [If the policy is effected in the name of the mortgagee, omit the assignment and insert a proviso for redemption of “ the sd policy of assurance hinbefore recited to have been effected ;”] [Réceipt clause, p. 40, and*

(c) The insertion of a power of attorney to the mortgagee to use the name of the mortgagor in suing, &c., is rendered unnecessary by the Policies of Assurance Act, 1867, 30 & 31 Vict. c. 144; but notice of the mortgage must be given to the office according to the Act unless the policy is effected in the name of the mortgagee.

trusts of monies received under policy, p. 41, unless these clauses are omitted in reliance on the statute, see p. 41, note; [If there are two or more mortgagees insert joint account clause if necessary, p. 39;] *Covenants by A. to keep up policy with subsidiary clauses, p. 42, form XXI., or p. 43, form XXII. : [Power of sale, p. 28, form III., unless omitted in reliance on the statute, see p. 22, note; the policy whether effected in the name of the mortgagor or mortgagee being described as, "the sd policy hby mtged;"] Mortgagee's indemnity clause, p. 61.*

IN WITNESS, &c.

XVI.

MORTGAGE of a LIFE INTEREST in REAL ESTATE PREC. XVI.
and POLICY of ASSURANCE on the life of the MORTGAGOR effected in his own name (a). VARIATIONS for several MORTGAGEES and several POLICIES.

PARTIES, A., mortgagor, 1; B., [C., and D.,] mortgagee [s],
2. *Recitals showing that A. is seised for life without impeachment of waste of, "the hereds hby mtged;" and is entitled to a policy or policies on his life, p. 8; Agreement for loan, p. 1; First testatum as in Precedent I., p. 74; Covenant by A. for payment, p. 9; and interest after default, p. 10.*
AND THIS INDRE ALSO WITNETH that in further Wit-
psuance of the sd agreemt and for the conson afsd the sd A. nosseth.
as beneficial owner (see p. 74, note) doth hby bargain, Demise.
sell (b), and demise unto the sd B., his [B., C., and D.,

(a) For variations where the policy is effected in the name of the mortgagee, see the last Precedent.

(b) The mortgage is effected, according to the practice hitherto usual, by Mortgage demise instead of by conveyance of the whole life estate, in order not to effected by affect the powers of leasing and consenting to sales, &c., annexed by the demise.

PREC. XVI. their] exs, ads, and assigns, *Parcels, Vol. I., p. 344 ; omitting general words and estate clause, see Vol. I., pp. 357, 359, notes ;* To HOLD the sd hereds and premes UNTO the sd B., his [B., C., and D., their] exs, ads, and assigns, for the term of 99 years from the day of the date of these presents, if the sd A. shall so long live, without impeachmt of waste, subj to the provo for redemption hinafter contd ; AND THIS INDRE ALSO WITNETH that in further psuance of the sd agreemt and for the conson afsd, *assignment by A. of policy or policies subject to redemption as in last Precedent, p. 104, if several policies describing them as, "the sd several policies on the life of him the sd A.," or describing them in full, see last Precedent, "and all monies assured by or to become payable under the same resply ;" Proviso for redemption, p. 18, saying, "surrender the sd hereds and premes hby demised, and reassign the sd policy [respive policies] and premes hby assigned unto the sd A., his*

Habendum.

To mortgagee.

Also witnessed.

settlement to the life estate, though according to the authorities, especially *Alexander v. Mills*, L. R. 6 Ch. Ap. 124 (see Dart, V. & P., 5th ed. pp. 76—7), the form of the mortgage in this respect does not appear to be very material ; and the importance of the question is diminished by the Settled Land Act, 1882, the powers of leasing and sale, &c., in which would affect, if not practically supersede, those of the settlement ; and by s. 50 of the Act the statutory powers remain exercisable notwithstanding any assignment or mortgage by the tenant for life, but not so as to affect the rights of a mortgagee or assignee for value without his consent, except as to granting rack-rent leases. The clause at the end of the Procedent keeping alive the powers should be inserted if according to the intention.

Use of the words "bargain and sell."

Mortgage by assignment.

The words "bargain and sell" are inserted, as the deed is intended to operate as a bargain and sale for the term so as to create an estate in the mortgagee without entry, instead of a mere *interesse termini*, as would be the case under a common demise, see 2 DAV. Prec., part 2, p. 512, note.

If the mortgage is by conveyance of the entire life estate the habendum would be, "UNTO the sd B., his exs, ads, and assigns, from the date of these presents during the life of and for all other the este and interest, if any, of the sd A. in the sd premes without impeachmt of waste," and the proviso for redemption would be for reconveyance and reassignment of "the sd hereds, policies, and premes hby conveyed and assigned."

exs, ads, or assigns, or as he or they shall direct ;" PREC. XVI.
[Receipt clause and trusts of monies received under the policy or policies, pp. 40, 41, forms XIX. and XX., unless these clauses are omitted in reliance on the Act, see p. 41, note] ; Covenant by A. to keep up policy or policies, &c., p. 42, form XXI., or p. 43, form XXII. ; Covenant by A. to insure and repair, if appropriate, p. 44, or covenant supplemental to statutory power of insurance, p. 46 ; [Power of sale, " of the sd hereds, policy, [policies], and premes hby mtged, or any of the sd premes," p. 29, unless omitted in reliance on the statute, see p. 22, note (c)] ; Mortgagee's indemnity clause, p. 61 ; [If so intended, add, PROVID ALWAYS, and it is hby agrd that nothing herein contd shall affect the power of the sd A. to exercise or consent to the exercise of any of the powers contd in the hinbefore recited indre of settlmt, or, " will," other than, here specify any power to be excepted, all which powers (save as afsd) shall be exercisable without any further consent or concurrence by or on the pt of the sd B., his [B., C., and D., their] exs, ads, or assigns ; and that this secy shall affect and attach upon the life este or interest of the sd A. in all ppty which by means of any

Proviso as to mortgagor's powers under settlement, &c.

(c) In the simple case where the life estate is followed by a remainder in fee, and the mortgage is effected by a grant of the entire life estate, it will be convenient to authorise the mortgagee to concur in the sale of the fee ; where this is intended add, " and with power to concur with the sd, *reversioner*, his hrs or assigns, in selling the fee simple and inheritance of the sd hereds or any pt thof," and say, " to rescind or vary or concur in rescinding or varying any contract," &c., and at the end of the clause giving the power to sell and convey, add, " with power on any such sale as afsd of the sd hereds, or any pt thof, to agree with the sd, *reversioner*, his hrs or assigns, for the apportionmt of the pchase-money in respect of the life este hby mtged and the reversion in fee expectant thereon."

Power for mortgagee to concur in sale of fee simple.

As to the apportionment of the purchase-money in such a case, see *In re Cooper*, 4 Ch. D. 802.

PREC. XVI. sale, exchange, or transposition of investmt under any of such powers, or under any statutory power, may from time to time be substituted for the sd hereds or any pt thof;]
[If the mortgage is to several on joint account, add the clause as to the devolution of the mortgagee's powers, p. 68;] Mortgagee's indemnity clause, p. 61.

IN WITNESS, &c. (g).

XVII.

PREC. XVII. MORTGAGE of a LIFE INTEREST in PERSONALTY and of POLICIES on the LIFE of the MORTGAGOR.

Recitals.	<i>PARTIES, A., mortgagor, 1; B., mortgagee, 2: WHAS under or by virtue of an indre dated, &c., and expd to be made, &c., being a settlemt executed in contemplation of the marre which was shortly afterwards solemnized between the sd A. and M., and of certain transfers and paymts made previously or subsequently to the sd indre of settlemt, the several monies, stocks, funds, secs, and ppty therein mentd became vested in the trees of the sd settlemt upon trusts for investing and transposing the investmt thof respdy, and subjt thto upon trust to pay the income of the same premes, and the investmts representing the same respdy to the sd</i>
Settle- ment.	<i>A. and his assigns during his life; AND WHAS the trust ppty now subjt to the trusts of the sd settlemt consists of the stocks, funds, shares, and secs, the parlars whof are specified in the first schedule hereunder written, which are now vested in X. and Y., the present trees of the sd settlemt; AND</i>
Investment of trust funds.	<i>WHAS the sd A. is absolutely entled to the several policies of assurance on his life mentd in the second schedule hereunder written; Agreement for loan, p. 1; First testatum as</i>
Title to policies.	

(g) Notice to be given to the insurance office or offices, see p. 104, note.

in *Precedent I.*, p. 74; *covenant by A. for payment of principal*, p. 9; and *interest after default*, p. 10; AND THIS INDRE ALSO WITNETH that in further psuance of the sd agreemt and for the conson afsd the sd A. as beneficial owner (*see* p. 74, *note*), doth hby assign unto the sd B., his exs, ads, and assigns: First, ALL THE dividends, interest, and income which shall arise during the life of the sd A. from the stocks, funds, shares, and secs specified in the first schedule hto, and every pt thof, and from the investmts and ppty from time to time representing the same or any pt thof; And secondly, ALL THOSE policies of assurance, the parlars whof are specified in the sd second schedule hto, and all monies assured by or to become payable under such several policies and the full benefit thof resply, *omitting the estate clause, see Vol. I.*, p. 359, *note*; To HOLD the sd premes lby assigned unto the sd B., his exs, ads, and assigns, subjt to the provo for redemption hinafter contd; *Proviso for redemption*, p. 18: AND IT IS HBY agrd that the trees or tree for the time being of the sd indre of settlemt shall from time to time during the continuance of this secy if requested so to do by the sd B., his exs, ads, or assigns, pay the sd dividends, interest, and income hby mtged or any pt thof to the sd B., his exs, ads, or assigns, and in the meantime shall pay the whole or such pt of the sd dividends, interest, and income as shall not be payable to the sd B., his exs, ads, or assigns, by virtue of any such request as afsd, to the sd A. or his assigns: [*Mortgagee's receipts to be discharges*, p. 40, "for any monies paid to him or them in psuance of any such request as afsd or under or by virtue of the sd policies of assurance, or any of them; AND IT IS HBY agrd that if the sd B., his exs, ads, or assigns, shall receive the sd dividends, interest, and income or any pt thof, or any monies in respect of the sd policies or any of them, he or they shall by and out of the same in the first place, *continue trusts of monies received*, p. 41, *unless these two clauses are omitted in reliance on the statute, see* p. 41, *note*]; *Covenant by A. to keep up life*

PREC. XVII.

Further witnesseth.

Assignment.
Life interest.

Policies.

Habendum.

To mortgagee.

Declaration that income shall be paid to mortgagee if required.

PREC. XVII. *policies, &c., p. 42, form XXI., or p. 43, form XXII. ; [Power of sale, p. 28, of, " the sd life interest, policies, and premes hby mtged, or any of them, or any pt or pts thof," unless omitted in reliance on the statute, see p. 22, note] ; Mortgagee's indemnity clause, p. 61.*

IN WITNESS, &c. (a).

The First Schedule to the above-written indre.

Particulars of trust property.

The Second Schedule to the above-written indre.

Name of Office.	Date of Policy.	Amount Assured.	Annual Premium.	Date when Premium is payable.	Number of Policy in the Books of the Office.

XVIII.

PREC. XVIII.

CONTRIBUTORY MORTGAGE of FREEHOLDS *where the money is advanced in DISTINCT SUMS by DIFFERENT MORTGAGEES. VARIATIONS where PART of the money is advanced by TRUSTEES. Short form (b).*

PARTIES, A., mortgagor, 1 ; B., one mortgagee, 2 ; C.,

As to contributory mortgages

(a) Notice must be given to the trustees of the settlement and to the insurance offices. See p. 104, note.

(b) This Precedent is simpler and shorter than a contributory mortgage in the more usual form, with separate covenants for payment of each sum

another mortgagee, 3; D. [and E.], other mortgagees, 4. PREC.
XVIII.
Recite title of A. as in a conveyance on sale, see Vol. I. AND
 WHAS the sd B., C., and D. [and E.], have this day ad- Recitals.
 vanced to the sd A. the sum of £6000 in the following pro- Loan.
 portions, namely, the sd B. £1000, the sd C. £2000, and
 the sd D. [and E., out of monies belonging to them on a
 joint account] £3000, upon an agreemt that the repaymt of
 the sd aggregate sum of £6000, with interest at the rate
 hinafter mentd, shall be secured to the sd B., C., and D.,
 [and E.,] and their exs, ads, and assigns, as joint tenants in
 mner hinafter appearing, but that all principal monies and
 interest hby secured [except the sd sum of £3000 and the
 interest thereon] shall in equity belong to the sd B. C., and
 D., [B. and C.,] and their respive exs, ads, and assigns, in
 the shares and proportions afsd as tenants in common in
 mner and subjt as hinafter mentd [and that the sd sum
 of £3000 and the interest thereon shall in equity belong to
 the sd D. and E., their exs, ads, and assigns, as joint
 tenants in mner and subjt as hinafter mentd]: NOW THIS Wit-
nesseth.
 INDRE WITNETH that in psuance of the sd recited
 agreemt, and in conson of the sums of £1000, £2000, and
 £3000, by the sd B., C., and D., [and E.,] resply paid to
 the sd A. in the proportions and mner afsd, the receipt of
 which sd several sums he the sd A. doth hby acknowledge,
Covenant by A. for payment of £6000 and interest, p. 9, and Covenant
for pay-
ment.

advanced, and separate powers of sale, &c. to each mortgagee (for a form of which see 2 Dav. Prec., pt. II., p. 385, 4th ed); the mortgage in the text being, as between the mortgagor and mortgagees, in all respects on the ordinary footing of a mortgage to joint tenants, although, as between themselves, the mortgagees collectively are trustees of the several sums secured for such of them as are entitled thereto. The disadvantage of this form is that no one of them can call in his money or exercise the powers without the concurrence of the others, and that the form is not adapted to a case in which there are stipulations (such as for reduction of interest on punctual payment) affecting some only of the sums advanced. Another plan is to take the mortgage in the names of trustees nominated on behalf of all the lenders in the usual form not disclosing the trust, with a separate declaration of trust; see the next Precedent.

PREC. interest after default, p. 10, to, "B., C., and D., [and E.,] or
 XVIII. the survivors or survivor of them, or the exs or ads of such
 Further survivor, their or his assigns," (c): AND THIS INDRE
 witnesseth. ALSO WITNETH that in further psuance of the sd
 Grant. agreemt and for the consons afsd, the sd A. as beneficial
 owner (*see* p. 74, *note*), doth hby grant unto the sd B., C.,
 and D. [and E.,] their hrs and assigns, *Parcels, see Vol. I.*,
 p. 344; *omitting general words and estate clause, see Vol. I.*
 pp. 357, 359, *notes*; *Habendum to B., C., D., [and E.,]*
subject to redemption, p. 15; *Proviso for redemption*, p. 17, *on*
payment of £6000 and interest to "B., C., D., [and E.,] or
the survivors or survivor of them, or the exs or ads of such
survivor, their or his assigns;" Covenant to insure and repair,
if appropriate, p. 44, *or clause supplementing statutory power*
of insurance, p. 46, [*Power of sale*, p. 22, *unless omitted in*
reliance on the statute, see p. 22, note], *Mortgagee's in-*
demnity clause, p. 61; PROVID ALWAYS, and it is hby agrd
 Proviso that as between the sd A., on the one pt, and the sd B., C.,
 that as re- and D., [and E.,] on the other pt, the sd aggregate sum of
 spectis £6000 shall be considered as belonging to the sd B. C., and
 mortgagor, and D., [and E.,] on a joint account, and accordingly that the
 money is sd B., C., and D., [and E.,], and the survivors or survivor of
 to be
 treated as
 advanced
 on joint ac-
 coun (d).

(c) If each contributory is a single person the covenant might take the following form, "The sd A. doth hby covenant with each of them the sd B., C., and D., his exs, ads, and assigns as a separate covenant, that he the sd A., &c., will on the — day of — next, repay to such respive covenantee, his exs, &c., the sum advanced or contributed by him towards the sd loan of £—— as afsd, with interest for the same, &c., and will thereafter in case and so long as such sum or any pt thof shall remain unpaid, pay to him or them interest for the same, &c.," the advantage of which would be that each mortgagee would be able to sue for his own debt without the concurrence of the others.

(d) The provisions of the Conv. Act, 1882, s. 61, do not apply to this case, and the clause in the text is necessary.

them, and the exs or ads of such survivor, their or his assigns, shall be considered as entled to the sd aggregate debt of £6000 and interest intended to be hby secured, and their or his rect shall be an effectual discharge for the same and every pt thof resply, and that all powers and remedies available under these presents or by statute for recovering paymt of the monies hby secured shall be exercisable and enforceable by them or him accordingly, without the concurrence of any other pson or psons who may be beneficially entled to any of such monies; BUT NEVERTHELESS as between themselves, the sd B., C., and D., [and E.,] and the survivors and survivor of them, and the exs or ads of such survivor, their or his assigns, shall stand possessed of all principal monies and interest hby secured in trust for the sd B., C., and D., [and E.,] their respive exs, ads, and assigns, as tenants in common in the shares hinbefore mentd, [excepting that the sd sum of £3000 and interest, shall be considered as belonging to the sd D. and E. on a joint account, and accordingly that the sd D. and E., and the survivor of them, and the exs or ads of such survivor, their or his assigns, shall be entled to the sd sum of £3000 and the interest thereon, and their or his rect given to the sd B., C., D., and E., or the survivors or survivor of them, or the exs or ads of such survivor, their or his assigns, shall be an effectual discharge for the same]: PROV'D ALSO, and each of them the sd B., C., and D., [and E.,] doth hby covenant with the others and other of them, their and his exs, ads, and assigns, that each of them the sd B., C., and D., [and E.,] his hrs, exs, ads, and assigns, will at any time at the request of the others of them or their respive hrs, exs, ads, or assigns, or any of them, concur in all such acts and proceedings as may be necessary or proper for calling in, recovering, or obtaining paymt of the principal monies or interest hby secured, or any pt thof, or exercising, enforcing, or pursuing any powers, remedies, or means for that ppose.

PREC.
XVIII.

But as
between
mortgagees
on separate
accounts.

Covenant
between
mortgagees
to concur
in proceed-
ings.

IN WITNESS, &c.

XIX.

PREC.
XIX.
—

**DECLARATION of TRUST of MONEY secured by
CONTRIBUTORY MORTGAGE taken in the names of
TRUSTEES where the money is advanced by the
lenders in UNEQUAL SHARES.**

PARTIES, A., B., and C., trustees, 1 ; D., one lender, 2 ; E. and F., other lenders, 3. Formal recital of mortgage for £3000 to A., B., and C., stating the covenant for payment, the conveyance and proviso for redemption, referring to the parcels as, "certain — and hereds situate in the parish of — and county of —, therein partly described," p. 4 : AND WHAS the sum of £3000 in the hinbefore recited indre stated to have been advanced by the sd A., B., and C., out of monies belonging to them on a joint account, was in reality advanced as to £1000 part thereof by the sd D., and as to £2000 the other pt thof by the sd E. and F., out of monies belonging to them as trees of an indre of settlemt, dated &c. ; AND WHAS the sd A., B., and C., have at the request of the sd other pties hto agrd to execute such declon of trust as is hinafter contd : NOW THIS INDRE WITNETH that in psuance of the sd agreemt, and in conson of the premes, it is hby decld that the sd A., B., and C., their exs, ads, and assigns, shall stand possessed of THE principal sum of £3000 secured by the hinbefore recited indre, and the interest thereon IN TRUST as to the sum of £1000, pt of the sd principal sum of £3000, and the interest on such sum of £1000, for the sd D., his exs, ads, and assigns, and as to the sum of £2000, other pt of the sd principal sum of £3000, and the interest on such sum of £2000, for the sd E. and F., their exs, ads, and assigns, or other the trees or tree for the time being of the sd indre of settlemt : AND FURTHER that the sd sums of £1000 and £2000, and the interest thereon resply, shall have no preference or priority the one over the other, but shall be payable rateably and

Recitals.

Title to money advanced.

Agreement.

Witnesseth.

Declaration of trust.

Sums to be secured rateably.

equally out of any monies which shall be received or realised by the sd A., B., and C., their exs, ads, or assigns, under or by virtue of the sd indre of mtge. PREC.
XIX.
—

IN WITNESS, &c.

XX.

MORTGAGE of a REVERSION in FEE by way of
INDEMNITY to a person who has become SURETY PREC.
XX.
—
for the mortgagor. POWER of SALE either of
the REVERSION or of the WHOLE ESTATE with
the CONCURRENCE of the TENANT for LIFE.
VARIATIONS for a SHARE of a REVERSION.

PARTIES, A., mortgagor, 1; B., mortgagee, 2. WHAS under Recitals.
the will of L., dated, &c., and proved on, &c., the sd A. is Will.
entled to [one equal undivided share [and may in certain
events become entled to a further share or shares] of] the
reversion in fee simple expectant on the death of K. in the
hereds hinafter mentd, or recite the will, &c., under which
A.'s title arises, at length; Joint and several bond from A.
and B. to the — Banking Company, Limited, to secure the
balance due from A. on an account current with the Bank,
setting out the condition fully, see Vol. I. p. 327; AND WHAS Agreement
the sd B. entered into the sd bond as surety only for the sd to indem-
A., and upon an agreemt that for the ppose of indemnifying nify surety.
the sd B., his hrs, exs, and ads, in respect of his and their
liability under the sd bond, the sd A. should enter into the
covenants, and execute the secy hinafter contd: NOW Wit-
THIS INDRE WITNETH that in psuance of the sd nesseth.
agreemt and in conson of the premes, *Covenant by A. for pay- Covenant*
ment on demand, p. 14, "to the sd B., his hrs, (a), exs, ads, to pay.

(a) As the heirs of the mortgagee are bound in the bond, the indemnity and all powers to the mortgagee should be extended to them.

PRINC. XX. or assigns of all and every sum and sums of money which shall be or become recoverable from him or them respby by virtue of the sd recited bond, and all costs, charges, and expenses which he or they shall incur or sustain by reason or in consequence of the sd bond or the suretyship effected thby, or otherwise in respect of the premes, and until paymt of such monies, will pay to him or them respby interest thereon, &c.,” p. 10, *form II.* : AND THIS INDRE ALSO
Further witnesseth. WITNETH that in further psuance of the sd agreemt and in conson of the premes the sd A. as beneficial owner (*see* p. 74, *note*) doth hby grant unto the sd B., his hrs and assigns, ALL THAT [undivided — pt or share, *where the mortgagor is contingently entitled to other shares, add, “and all and singular other the pt or share, pts or shares, este, right, and interest whatsoever to which the sd A. now is or may hereafter become entled in reversion, remainder or otherwise under or by virtue of the sd will of the sd K.,” of and in*], *Parcels, Vol. I.*, p. 344 ; *omitting general words and estate clause, see Vol. I.*, pp. 357, 359, *notes* ; To HOLD all the sd premes hby granted UNTO AND TO THE USE of the sd B., his hrs and assigns, subjt to the life este therein of the sd K., and subjt to the provo for redemption hinafter contd ; *Proviso for redemption, p. 17, of, “the sd premes hby granted” on payment on demand, “to the sd B., his hrs, exs, ads, or assigns, of all and every the sum and sums of money hinbefore covenanted to be paid” ; [Power of sale, p. 22, with the following variations, the power to sell is given, “to the sd B., his hrs, exs, ads, or assigns,” exercisable, “without any further consent of or notice to the sd A., his hrs or assigns,” substitute in the first clause for the words in note (b), “and to make any such sale as afsd if thought fit with the concurrence of the sd K., or his assigns, [and the pson or psons for the time being entled to the other pt or share, if so, add, “pts or shares” of the hereds hinbefore described in reversion expectant on the death of the sd K., or any of such*
Grant.
Parcels.
Haben-
dum.
To mort-
gageo.
Power to
sell with
the con-
currence
of the
tenant for
life or the
owners of
other
shares (d).

(d) See *In re Cooper*, 4 Ch. D. 802.

persons] in order to effect a sale of the sd hereds in possession, PREC. XX.
 [or, in order to effect a sale of the entirety or any share or
 shares of the sd hereds and either in possession or reversion],
 and with power in such case to agree with the person or
 persons concurring in such sale for the apportionment of
 the purchase-money in such manner as may be thought
 proper ;” *omit the clause as to the events in which the power
 is to be exercised, and in the proviso for protection of
 purchasers omit the words referring to the preceding clause ;
 in the power to give receipts and the trusts of the purchase-
 money, say, “ the sd B., his heirs, executors, administrators, or assigns,” and
 these clauses will apply to the purchase-money, “ or so much
 thereof as may be paid to him or them” (e) ;*] *Mortgagee’s
 indemnity clause, p. 61, saying, “ the sd B., his heirs, executors, administrators,
 or assigns.”*

IN WITNESS, &c. (f).

(e) If the statutory power of sale is relied on (see p. 22, note), the following clause should be inserted :— Addition
to statu-
tory power
of sale.

“ AND IT IS HEREBY agreed that for the purpose of any sale of
 the sd premises hereby mortgaged, or any part thereof, under the power
 of sale vested in the sd B., his heirs, executors, administrators, or assigns,
 by virtue of these presents and the statute in that behalf,
 the whole of the principal monies hereby secured shall be
 deemed to become due on the day of the date of these
 presents, AND that any such sale as aforesaid may be made
 if thought fit,” &c., *continue power to sell with concurrence of
 the tenant for life, &c., as above.*

(f) Notice of the mortgage should be given to the tenant for life as the
 holder of the title deeds, and it would be desirable to endorse a notice of it
 on one or more of the deeds. This mortgage, though by way of indemnity
 only, is chargeable with ad valorem stamp duty ; *Lord Canning v. Roper*, 1
 El. & B. 164.

XXI.

PREC.
XXI.

MORTGAGE by a HUSBAND and WIFE of the WIFE'S REVERSIONARY SHARE of a FUND in COURT, a SURETY joining to covenant for payment of INTEREST. The PRINCIPAL is made PAYABLE on the REVERSION falling into POSSESSION or the DEATH of the HUSBAND. POWER to Mortgagee to obtain a STOP ORDER (a).

Recitals. PARTIES, A. and B., his wife, 1; C., surety, 2; D., mortgagee, 3. Recite will of X., bequeathing a legacy of £—— in trust for K. for life, remainder for such of her children as should being sons attain twenty-one, or being daughters attain twenty-one or marry, with the usual advancement and maintenance clauses; Death of X. and probate: AND WHAS the Action. [action] of ——, add reference to record, was commenced in the year —— in the Chancery Division for the ppose of

The
Married
Women's
Property
Act, 1882.

(a) If the wife was married, or her title to the reversionary interest accrued after 1882, she would be able to dispose of it as a *feme sole* under the Married Women's Property Act, 1882, see p. 91, note. This Precedent is for a case where the wife was married and her title arose prior to 1883, so that the old law is applicable so far as regards the power of disposing of the property, and the mortgage must therefore be by deed acknowledged, with the concurrence of the husband, under the Act 20 & 21 Vict. c. 57 (see as to acknowledgments, Vol. I., p. 834, note). But the wife can enter into covenants under the Married Women's Property Act, 1882, as a *feme sole*, see p. 92, note; and is in this Precedent made so to covenant.

The Act 20 & 21 Vict. c. 57, applies only to reversionary interests acquired after 31st Decr., 1857, and excepts from its provisions a reversionary interest to which a married woman is entitled under her own marriage settlement; so that where the settlement was before 1883, the wife cannot make a binding disposition by deed of her reversion under the usual ultimate trusts (in default of issue) of her own personalty; but under a settlement made since 1882, she would have full power under the Married Women's Property Act, 1882, s. 2, to dispose of such an interest subject to any restrictions expressly imposed by the settlement.

For a mortgage by a married woman as a *feme sole* under the late Act, see Precedent XII., p. 95.

having the este of the sd testor administered and the trusts of his will executed under the direction of the court: AND WHAS, in obedience to a direction contd in the order of the court made on the — day of — on the further conson of the sd action, the sd sum of £—— less legacy duty was invested in the pchase of the sum of £—— — Annuities, which were transferred into court to the credit of the sd cause, "the account of the legacy of K. and her children:" AND WHAS the sd B. is one of the six children of the sd K., and has attained the age of twenty-one years, but three of such children are still under that age; *Agreement for loan*, p. 1, *with agreement that C. should join as surety*, p. 8, *form VII.*: NOW THIS INDRE WITNETH, &c., *consideration*, p. 8; *joint and several covenant by A. and B. for payment*, p. 10; *and interest after default*, p. 10; *covenant by C. to pay interest on default of A. and B.*, p. 15, *form XIII*, *mutatis mutandis*: AND THIS INDRE FURTHER WITNETH that in psuance of the sd agreemt and for the conson afsd, the sd B. as beneficial owner (b) with the concurrence of the sd A., doth hereby assign and the sd A. as beneficial owner (b) doth hby assign and confirm unto the sd D., his exs, ads, and assigns, ALL THAT the pt or share or pts or shares to which the sd B. or the sd A. in her right now is or may hereafter by means of the death of any one or more of the other children of the said K. without attaining a vested interest or by any other means become entled under the sd will or otherwise howsoever, of and in the sd sum of £—— — Annuities, or other the stocks, funds, or secs for the time being constituting or representing the sd legacy of £——, or any pt thof, and of and in all accumulations which may be added thto, TOGR WITH all powers and remedies for recovering and obtaining paymt and transfer of the sd share or shares and premes hby assigned: TO HOLD

PREC.
XXI.Sum set
apart to
answer
share.

Family.

Wit-
nesseth.Further
witnesseth.Assign-
ment of
shares.Haben-
dum.

(b) See p. 64, note. This implies covenants for title, both by A. and B., as to the latter binding her separate estate under the Married Women's Property Act, 1882, see p. 92, note.

PREC.
XXI.

To mort-
gagee.

Proviso as
to primary
liability as
between
mortgagor
and surety.

Power to
obtain
stop
order (c).

the sd premes hby assigned unto the sd D., his exs, ads, and assigns, subjt to the proviso for redemption hinafter contd; *Proviso for redemption to B., p. 18, form II., with variations as in Prec. XII., p. 96; [Mortgagee's receipt clause, p. 40; and Trusts of monies received in respect of reversion, p. 41, unless these two clauses are omitted in reliance on the statute, see p. 41, note]; Proviso for continuance of loan for a term certain, p. 35, saying, "shall not before the death of the sd K., or of the sd A., whichever shall first happen, call in, &c."; [Power of sale, p. 28, made exerciseable "without any further consent on the pt of the sd A. and B. or either of them, their or either of their exs, ads, or assigns," and the notice prior to the exercise of the power being required to be given and the surplus proceeds of sale made payable to "the sd B. her exs, ads, or assigns;" unless the statutory power of sale is relied on, in which case insert form VIII., p. 31;] Mortgagee's indemnity clause, p. 61; PROVID ALWAYS and it is hby agrd that as between the sd A., B., and C., resply, and their respive hrs, exs, and ads, and the sd mtged premes, the sd A., his hrs, exs, and ads, shall be primarily liable to the paymt of the principal monies and interest intd to be hby secured; *Proviso that D. is not to be affected by the last declaration, p. 39; Declaration that C. shall be liable as a principal debtor for the interest, p. 40: AND THE* sd A. and B. do hby empower the sd D., his exs, ads, and assigns, at the cost of the sd A., his exs or ads, to apply for and obtain an order in the sd action, prohibiting the share or shares and premes hby mtged, or any pt or pts thof, from being paid or transferred out of court without notice to the sd D., his exs, ads, or assigns, and upon such application to use the names of the sd A. and B. as consenting thto, and to instruct solors and counsel accordingly on their respive behalf.*

IN WITNESS, &c.

(c) A stop order on the funds in court must be obtained by application at Chambers; see Seton on Decrees, 300; 2 Day. Prec., pt. II., p. 578, note.

XXII.

MORTGAGE of a REVERSIONARY INTEREST in SETTLED PERSONALTY, and POLICY of assurance on the DEATH of the MORTGAGOR in the LIFETIME of the TENANT FOR LIFE, the mortgage DEBT being payable on the reversion or policy falling into POSSESSION. PROVISIONS for payment of COMPOUND INTEREST at the OPTION of the MORTGAGOR, and for the POLICY being kept up by the MORTGAGEE. VARIATION where INTEREST VARIES according to BANK RATE.

PRO.
XXII.
—

PARTIES, A., mortgagor, 1; B., mortgagee, 2. Recite the marriage settlement of the father and mother of A., whereby personally was vested in trustees upon trust for the father and mother successively for life, with remainder to the children who should attain twenty-one, &c.; The marriage of the father and mother; The death of the mother: That A. is the only child of the marriage who attained twenty-one; The present state of investment of the trust funds: AND WHAS the sd Policy. A. has effected a policy of assurance in the — Assurance Society dated the — day of —, and numbered —, whby the sum of £— is assured to be paid to the exs or ads of the sd A. within — calendar months after his death in the event of his dying during the lifetime of the sd K., the father; Agreement for loan, p. 1, with agreement for payment of compound interest, p. 8; NOW THIS INDRE WITNETH, &c., consideration, receipt, Covenant by A. with B., “that he the sd A., his hrs, exs, or ads, will at the expiration of three calendar months after the death of such one of them the sd A. and K. as shall first die, pay the sd sum of £—, the principal, and all sums which the sd B., his exs, ads, or assigns, shall have expended in the meantime in keeping on foot the sd policy hinbefore mentd, or in effecting or keeping on foot any substituted policy or policies to be

Recitals.

Wit-
nes:eth.
Covenant
to pay
principal
and sums
advanced
for pre-
miums,

PREC.
 XXII.
 ———
 with com-
 pound
 interest.
 Clause as
 to capital-
 ization of
 interest.

effected as hinafter is mentd, togr with compound interest at
 the rate of ——— per cent. per annum [at a rate varying,
 &c., p. 14, *note*] on the sd sum of £——, and on the sums so
 expended as afsd; THE INTEREST on the sd sum of £——
 to commence from the date of these presents, and on the
 sums of money expended as afsd from the time of the
 same resp'y being expended, and all such interest to be
 capitalised half-yearly on the ——— day of ——— and ———
 day of ——— in every year until the time hinbefore appointed
 for paymt of the aggregate amount due on the secy of these
 presents, and so that on every half-yearly day for making a
 rest as afsd, the interest up to that day shall be added to
 the principal sum owing so as to form one aggregate sum,
 carrying interest at the rate afsd: AND FURTHER that in
 case the aggregate sum hinbefore covenanted to be pd or
 any pt thof shall remain unpaid after the time hinbefore
 appointed for paymt thof, the sd A., his hrs, exs, or ads,
 will thereafter pay to the sd B., his exs, ads, or assigns,
 interest on such aggregate sum, or on so much thof as shall
 for the time being remain unpaid, at the rate afsd by equal
 half-yearly paymts, the first of such half-yearly paymts to be
 made at the expiration of six calendar months from the time
 appointed for paymt of the sd aggregate sum as afsd: PROV'D
 ALWAYS that the sd A., his exs or ads, shall be entled on
 any half-yearly day for making a rest as afsd to pay to the
 sd B., his exs, ads, or assigns, the whole or any pt (not
 being less than £—— at any one time), of the amount
 then owing in respect of sums expended as afsd, and of
 interest (whether capitalised or not) in reduction of the
 aggregate amount owing as afsd: AND THIS INDRE
 ALSO WITNETH that in further psuance of the sd recited
 agreemt and for the conson afsd, the said A., as beneficial
 owner (*see* p. 74, *note*) doth hby assign unto the sd B., his
 exs, ads, and assigns, First, ALL THE monies, stocks, funds,
 shares, and secs now subj't to the trusts decl'd by the sd
 recited indre of settlemt, or which by means of any change
 of investmt or otherwise may from time to time be substi-

Covenant
 for pay-
 ment of in-
 terest after
 default.

Power to
 pay off
 sums ad-
 vanced for
 premiums
 and capi-
 talised
 interest.

Further
 witnesseth.

Assign-
 ment of
 settled
 funds.

tuted for the same resply or any pt thof; And secondly, PREC. XXII.
ALL THAT the sd policy of assurance effected on the life of Policy.
the sd A. as hinbefore mentd, and all monies assured by or
to become payable under the sd policy and the full benefit
thof, **TOGR WITH** all powers and remedies for recovering and
obtaining paymt and transfer of the sd respive premes,
omitting the estate clause, see Vol. I., p. 359, note: **TO HOLD** Habendum.
the sd premes hby assigned unto the sd B., his exs, ads, and
assigns, subjt as regards the sd premes first hinbefore To mortgagee.
described and assigned to the este and interest of the sd K.
during his life therein, and subjt as regards all the sd
premes to the provo for redemption hinafter contd, *Proviso*
for redemption, p. 18, on payment, "at the expiration of
three calendar months after the death of such one of them,
the sd A. and K., as shall first die," of, "the aggregate
amount hinbefore covenanted to be paid;" [*Receipt clause,*
p. 40, and Trusts of monies, &c., received in respect of rever-
sion or policy, p. 41, unless these two clauses are omitted in
reliance on the statute, see p. 41, note]; *Covenant by A. to*
keep up policy, p. 42, down to the end of the provision that
new policies are to be subject to the security, omitting through-
out the words, "at his own cost:" **PROVD ALWAYS,** and it is Proviso
hby agrd that it shall not be incumbent on the sd A., unless that mort-
he shall think fit so to do, to pay any premiums or monies gagor need
for keeping on foot the sd original policy, or effecting or not pay
keeping on foot any such substituted policy, **AND** in case he premiums.
shall at any time neglect or refuse to make the paymts afsd That mort-
or any of them, it shall be lawful for the sd B., his hrs, exs, gagee may
ads, or assigns, to pay the same; **BUT** nevertheless the sd do so.
B., his exs, ads, or assigns, shall not, under any circes, be
responsible for any omission or refusal to keep on foot or
renew the sd original or any substituted policy, nor for any
losses or expenses which the sd A., his exs, ads, or assigns,
may suffer by reason of any such omission or refusal (d);

(d) As the right to call in the mortgage money does not arise until either the reversion or the policy has fallen into possession, if the amount then

PREC.
XXII.

Mortgagee's indemnity clause, p. 61, omitting, if the power of sale is negatived, the words, "the power of sale or."

IN WITNESS, &c. (e).

XXIII.

PREC.
XXIII.

MORTGAGE of WIFE'S CONTINGENT REVERSION *belonging to her for her SEPARATE USE and a POLICY on her life effected for her SEPARATE USE under the MARRIED WOMEN'S PROPERTY ACT, 1870 or 1882 (a).*
PROVISION *for continuing LOAN for a TERM.*

Recitals.

PARTIES, A., and B., his wife, 1 ; C., 2. Recite will of X., bequeathing the testator's residuary real and personal

receivable will suffice to pay it off without resorting to the other part of the security, a power of sale would be unnecessary ; but if thought proper, a power may be given, "at any time after the death of the sd A., in the event of his dying in the lifetime of the sd K.," to sell, "the sd reversionary interest hby mtged, or any pt thof," p. 28 ; but the statutory power would be applicable in that event unless expressly excluded, see p. 22, note.

As to
notices to
be given.

(e) Notice must be given to the trustees of the reversion, and the insurance office. If the trust property comprises stocks transferable at the Bank of England, or the stocks, shares, or securities of any public company, whether incorporated or not, security against malversation by the trustees may be obtained by giving notice to the bank or company, supported by affidavit, under the Rules of the Supreme Court of April, 1880, Order XLVI., the effect of which is similar to that of the old writ of distringas under 5 Vict. c. 5, s. 5, which is abolished by that order ; see 2 Dav. Prec., pt. ii., p. 577, note.

Power of
married
woman to
effect
policy for
her sepa-
rate use.

(a) See the Acts, 33 & 34 Vict. c. 93, s. 10, and 45 & 46 Vict. c. 75, s. 11. The former Act provided that a married woman might effect a policy on her own life, or that of her husband, for her separate use, and the latter Act, which repeals the former, contains a similar provision. The husband is made a party to the mortgage in order to covenant for payment and for keeping up the policy, the money being advanced to him, and he is also made to confirm the assignment in order to imply covenants for title by him. If desired the covenants for payment, &c., may be joint and several by the husband and

estate in trust for conversion and investment of the proceeds, and declaring trusts of such proceeds, subject to payment of debts and legacies, for K., the testator's widow for life, with remainder for such of his children as should survive her and attain twenty-one or marry, and the issue of such of them as should be then dead per stirpes, with the usual advancement and maintenance clauses, [and a declaration that all bequests to married women should be for their separate use]; Death of testator and probate: AND WHAS the funeral and testamentary expenses debts and legacies of the sd testor have all been paid, and his residuary real and psonal este so far as the same has been ascertained now consists of, or is represented by the stocks, funds, secs, and ppty specified in the schedule hto: AND WHAS the sd K. is still living: AND WHAS there are six children of the sd X. now living, three of whom, including the sd B., have attained the age of twenty-one years, and the remaining three of such children are still under that age, and one child of the sd X. has died leaving issue: AND WHAS under the circes afsd, the sd B. is entled [for her separate use, independently of the sd A.], to one-seventh share of the trust premes constituting or representing the residuary este of the sd X., in reversion expectant on the decease of the sd K., and contingently upon the sd B. outliving the sd K., such share being susceptible of augmentation by the death of any of the other children of the sd X. in the lifetime of the sd K. without issue or by the death of any of such children at any time under the age of twenty-one years; *Agreement for loan to A., p. 1:* AND WHAS [as pt of the intended secy] the sd B. has effected and is entled to a policy of assurance in the — Association on her life, in her own name, and for her separate use dated, &c., and numbered, &c., and under the

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XXIII.

Adminis-
tration of
estate.

Widow
living.
Family.

Title of
wife.

Policy.

wife as in Precedent XXI. ; see p. 119, note. The form of the mortgage will be substantially the same, whether the wife's title to the reversion and policy arose under the old law, or she was married, or her title accrued since 1882, so as to be under the Married Women's Property Act, 1882, as to which see p. 91, note.

PREC.
XXIII.
—

Further
witnesseth.

Assign-
ment of
share.

Policy.

annual premium of £——, whby the sum of £—— is as-
sured to be paid to her exs, ads, or assigns, in the event of
her death in the lifetime of the sd K.; *First testatum, cove-
nant by A. for payment as in Precedent I., p. 74*: AND
THIS INDRE ALSO WITNETH that in further psuance
of the sd agreemt and for the conson afsd the sd B., as
beneficial owner (b) doth hby assign, and the sd A. as bene-
ficial owner (b) doth hby confirm unto the sd C., his exs,
ads, and assigns, ALL THAT one equal seventh pt or share,
or other the share and interest to which she the sd B. is or
will upon the decease of the sd K., or otherwise become
entled in the event of her surviving the sd K., of and in
the stocks, funds, secs, and ppty specified in the schedule
hto, or hereafter constituting, arising from, or repre-
senting the residuary real and psonal este of the sd
X., or any pt or pts thof, and the interest, dividends,
rents, profits, or income thof, and accumulations added
thto: AND ALSO all that the hinbefore mentd policy of
assurance on the life of her the sd B., and the sum of £——
thby assured, and all monies to become payable thereunder
and the full benefit thof, *omitting the estate clause, see Vol. I.,
p. 859, note*: TOGR WITH all powers and remedies for ob-
taining and compelling paymt and transfer of the sd share
and premes first hinbefore assigned, and the monies assured
by or to become payable under the sd policy; *Habendum to
C. subject to redemption, p. 17; Proviso for redemption,
p. 18, "on paymt by the sd A., his hrs, exs, or ads, or the
sd B., her exs, ads, or assigns, or any of them," the re-
assignment to be made, "to the sd B., her exs, ads, and
assigns, as her separate ppty and este, independently of the
sd A., or as she or they shall direct;" [Receipt clause,
p. 40, and trusts of monies received in respect of the said
share, policy, and premises, p. 41, "whether before or after
the time hby appointed for paymt of the principal monies
intd to be hby secured," the surplus to be paid or transferred,*

(b) See p. 119, note.

"to the sd B., her exs, ads, or assigns as her separate ppty," &c., *unless these two clauses are omitted in reliance on the statute, see p. 41, note;*] *Proviso for continuance of loan for a term certain, p. 35, "if the sd A., his hrs, exs, or ads, or the sd B., her exs, ads, or assigns, shall on every half-yearly day, &c.;" and, adding at the end of the clause, "except so far as the sd principal sum may become satisfied, in the meantime, by the retainer by the sd C., his exs, ads, or assigns, of any monies received or realised by him or them in respect of the sd share, policy, or premes afsd;" Proviso that, "the sd A., his hrs, exs, or ads, or the sd B., her exs, ads, or assigns shall not," be at liberty to pay off for a term certain, p. 35; Covenant by A. with C. to keep up the policy, p. 42, with the following variations, that B. shall not do anything to vitiate the policy, and that A., his exors or admors, or B. will enable C. to renew policy, and that A., his exors or admors, will pay the premiums and deliver the receipts, and that if A., his exors or admors, should neglect so to do, power to C. to keep up the policy, and that A., his exors and admors, will repay all monies expended by C., in keeping up the policy or effecting any new policy, with interest, and mortgaged premises to be charged with the payment; [Power of sale, p. 28, unless omitted in reliance on the statute, see p. 22, note, "of the sd share, policy, and premes, hby mtged" without any further consent "of the sd B., her exs, ads, or assigns;" notice to exercise the power to be given to "the sd B., her exs, ads, or assigns;" trust of surplus monies to be for "B., her exs, ads, or assigns, as her separate ppty, &c." If power of sale is omitted, insert form VIII., p. 31.] [Add, if need be, clauses as to husband being primarily liable for the debt, &c., see Prec. XXII., p. 120]. Mortgagee's indemnity clause, p. 61.*

IN WITNESS, &c. (c).

Schedule.

(c) Notice to be given to the trustees of the will, and the insurance office; and see p. 104, note.

XXIV.

PREC.
XXIV.
—

MORTGAGE of FREEHOLDS to a BUILDING SOCIETY
incorporated under the BUILDING SOCIETIES ACT,
1874. VARIATIONS for LEASEHOLDS and COPY-
HOLDS, and in OTHER respects. Concise form (a).

PARTIES, A., a member of the — Building Society, incorporated under the Building Societies Act, 1874 (hinafter called the mtgor, which expression shall include also his hrs, exs, ads, and assigns, where the context so requires or

As to the
Building
Societies
Acts.

(a) This Precedent is adapted to a society originally formed under the Building Societies Act, 1874 (37 & 38 Vict. c. 42), or to one formed under the repealed Act, 6 & 7 Will. IV. c. 32, and which has obtained a Certificate of Incorporation under the Act of 1874 (which is optional, see ss. 7 & 8, and the Amendment Acts of 1875 and 1877, 38 & 39 Vict. c. 9 ; 40 & 41 Vict. c. 63.) In the case of a society formed under the repealed Act, and not incorporated under the Act of 1874, the mortgage must be taken in the names of the trustees, for forms of which, see 2 Dav. Prec., pt. ii., 3rd ed., pp. 1236, 1248, which may be readily altered to adapt them to the Conv. Acts, 1881 and 1882, with the aid of the above Precedent. In the case of this Precedent it is assumed that the mortgagee's powers are either provided for (as is usual) by the rules, which are incorporated, or are to be dependent on the Conv. Act, 1881, which however requires modification to adapt it to a security of this kind ; otherwise short express powers, excluding or partially incorporating the statutory powers, should be inserted, which may be taken from the next precedent of a mortgage to an Industrial and Provident Society. The latter course would perhaps be more convenient than to rely on the statutory powers with a clause modifying them as in p. 131, note. As to mortgages of copyholds, see the Building Societies Act, 1874, ss. 25, 28. Mortgages to Building Societies were formerly exempt from stamp duty, but by 31 & 32 Vict. c. 124, s. 11 (re-enacted by the Stamp Act, 1870, 33 & 34 Vict. c. 97, s. 112), the exemption was repealed as to mortgages by *members* above £500, and as to all mortgages by *non-members* ; and in the case of Societies under the Act of 1874, there is no exemption (see s. 41). The mortgage in the text appears to be chargeable with duty on the amount of the advance, under the Stamp Act, 1870, s. 108. These mortgages may be discharged on redemption by an ordinary reconveyance or by a mere receipt ; see the Act of 1874, s. 42, and the Act of Wm. IV., s. 5. The receipt appears to be in all cases exempt from Stamp Duty, see 2 Dav. Prec., pt. ii., 4th ed., pp. 302, 709, notes.

As to the law of Building Societies, see 2 Dav. Prec., pt. ii., 4th ed., p. 703, note.

admits), 1: The sd — Building Society (hinafter called the Society, which expression shall include also the assigns of the Society, where the context so requires or admits), 2 (b): WITNETH that in conson of the sum of £—— upon the execution hereof advanced by the Society to the mtgor (being the amount to which he is entled according to the rules of the Society, [and in parlar according to the rules under the head ——,] in respect of —— shares held by him in the Society), the rect whof is hby acknowledged, the mtgor hby covenants with the Society that the mtgor will pay to the Society, according to the rules thof, the sum of £—— per [month] during the period of —— years, to be computed from the —— day of ——, the first of such paymts to be made on the —— day of ——, and the subsequent paymts to be made at regular successive intervals of one [month] during the whole of the sd period without deduction, but so nevertheless that, as to any day on which any such paymt shall fall due which shall not be a day of meeting of the Society, the sum falling due on that day shall be payable on the first day of meeting next ensuing, AND ALSO will duly and punctually pay as and when the same shall resply become payable all such fines, fees, or other monies as may become payable by the mtgor under the —— rule, or any other rule or rules of the Society in respect of the shares held by him the mtgor as afsd (c): AND THIS

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XXIV.

Wit-
nesseth.

Covenant
for pay-
ment of in-
stalments.

And fines.

(b) For copyholds add, "B., C., and D., trees appointed by and on behalf of the Society (hinafter called the trees, which expression shall include also their hrs and assigns, where the context so requires or admits), 3."

Variation
for copy-
holds.

(c) If the mortgage (as in many of the older societies) is to secure, not (as in the text) the repayment of the sum advanced by instalments, but the payment by the advanced member of his subscriptions and other contributions to the funds of the society according to the rules, the mortgagor will covenant for payment of "all the [monthly] subscriptions which, according to the rules for the time being of the Society, shall from time to time become payable by the mtgor in respect of the sd —— shares [calculated on the —— years' scale, that is

Variation
where
mortgage
is to secure
subscriptions.

PREC. XXIV. —
 Further witnesseth.
 Conveyance.
 Parcels.
 Habendum.
 Proviso for redemption (f).

INDRE FURTHER WITNETH, that for the conson
 asfd the mtgor, as beneficial owner (*see* p. 64, *note*), doth
 hby grant (d) [*for leaseholds*, assign, or, demise] unto the
 Society (e), ALL the hereds mentd or described in the schedule
 hto, *omitting general words and estate clause, see Vol. I. pp.*
857, 859, notes ; Habendum for freeholds, p. 15, form I. ; for
leaseholds, p. 16, form II., in either case say, "the Society,"
and for leaseholds, instead of, "the sd term of — years
granted by the sd indre of lease," say, "the term of —
years, granted by an indre of lease dated, &c., and expd,
 &c." : PROVD ADWAYS, and it is hby agrd that if the mtgor
 shall duly and punctually pay to the Society according to

to say, the sum of £—— per month on the first Monday in
 every month for the period of — years from the — day
 of —], and all fines and other monies which, according
 to the sd rules, shall become due on the sd shares,"
 instead of as in the text, and corresponding modifications will be made in the
 other clauses. As to the mode of taking the account where the loan is re-
 payable by instalments, and an annual premium is charged against the borrower
 on his shares, *see Harrey v. Municipal, &c., Society, Weekly N. 1883, 28.*

Variation for copyholds.
 (d) In a mortgage of copyholds substitute for the conveyance and proviso
 for redemption the following: "the mtgor, as beneficial owner,
 (*see* p. 76, *note*) hby covenants with the Society that he
 the mtgor, and all other necessary pties, if any, will forth-
 with at his or their own cost surrender ALL THE hereds
 mentd or described in the schedule hto, TO THE USE of the
 trees according to the custom of the manor of which the
 same are holden, subjt to a condon for making void such
 surrender on paymt by the mtgor to the Society, according
 to the rules thof, of the sd monthly and other sums of
 money, fines, and fees, psuant to the covenant in that be-
 half hinbefore contd."

Add declaration of trust for the trustees till surrender, and power of
 attorney, p. 38.

(e) The enactment in the Conv. Act, 1881, s. 51, enabling a fee simple to
 be limited by the words "in fee simple," without the word "heirs," does not
 of course make the expression appropriate to conveyances to corporations, any
 more than before the Act.

(f) See the Building Societies Act, 1874, s. 42.

the rules thof the sd monthly and other sums of money, fines, and fees, psuant to the covenant in that behalf hin- before contd, then and in such case this security shall be vacated by a rect or reconveyance psuant to the statute in that behalf and the rules of the Society, or otherwise as the mtgor shall direct; [*In mortgage of leaseholds by demise, add declaration of trust of nominal reversion and power of attorney, p. 84 (f);*] PROVID ALWAYS, and it is hby agrd, that

PREC.
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—

Rules of
society in-
corporated.

(f) The following is a clause modifying the statutory powers of insurance appointing receivers and sale, if they are relied on; see as to these powers, p. 44, note, p. 55, note, and p. 22, note. As to the statutory leasing powers, see p. 48, note.

"AND IT IS HBY AGRD that the powers of insurance against fire conferred on mtgees by statute shall be exerciseable by the Society in case the mtgor shall omit or neglect to keep the sd mtged premes properly insured, or to produce to the Society or to any of their officers on demand the policy of such insurance or the rect for the current year's premium, AND that the power of appointing receivers conferred on mtgees by statute shall be exerciseable in case default shall be made by the mtgor for one monthly meeting of the Society in paymt of some instalmt or monies which shall have become due by him to the Society under this security, or the rules of the Society, and that any monies received by any receiver so appointed shall, after making any prior paymts which ought properly to be made thereout psuant to the sd statute, be applied in discharge of the instalmts and monies which shall have become due under these presents, and the surplus only of the monies so received which shall remain after making all such paymts shall be paid to the mtgor, AND that the power of sale conferred by statute on mtgees shall become exerciseable by the Society in case defau shall be made by the mtgor for three monthly meetings in paymt of any instalmt or monies which shall have become due to the Society as afsd, [or in the observance or performance of any of the sd rules, or in case the mtgor shall become bankrupt, or make

Provisions
as to statu-
tory powers
of in-
surance,
appointing
receivers,
and sale.

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XXIV.
—

the rules of the Society under the head, *insert the numbers and heads of the rules applicable*, or such of them as are capable of applying to this transaction, shall apply hto as if herein inserted with the necessary modifications, AND ALSO that the other rules of the Society so far as capable of applying to this transaction, and except so far as the same are hby varied or departed from or are inconsistent with any of the provons hereof, shall also (though not expressly referred to) apply to this transaction; *Mortgagee's indemnity clause*, p. 61 [*Clause keeping alive right of Consolidation*, p. 62.]

IN WITNESS, &c.

Schedule of Parcels.

XXV.

PREC.
XXV.
—

MORTGAGE of FREEHOLDS to an INDUSTRIAL and PROVIDENT SOCIETY by a MEMBER to secure the PURCHASE-MONEY of a TENEMENT by WEEKLY INSTALMENTS according to the RULES. VARIATIONS for LEASEHOLDS and COPYHOLDS. PROVISIONS for INSURANCE against fire; POWERS to the Mortgagees of ENTRY, appointing a RECEIVER, LEASING, and SALE. Concise form (a).

PARTIES, A., a member of the — Co-operative Building

or enter into any arrangemt or composition with or for the benefit of his creditors,] and the requiremts and restrictions of the sd statute as to giving notice prior to the exercise of the sd power of sale shall not apply to this secy."

The Industrial and Provident Societies Act.

(a) See the Industrial and Provident Societies Act, 1876, 39 & 40 Vict. c. 45, by which the previous Acts are consolidated and amended. As to previously existing societies, see ss. 5, and 7 (4). By s. 11 (1) the effect of registration is to render the society a body corporate, and to vest in the society all property for the time being vested in any person or persons in trust for the society. See as to advancing money to members on the security of real or personal property, s. 12 (2); as to copyholds, s. 12 (3); as to giving

and Land Society, Limited, having — paid-up shares therein, (hinafter called the mtgor, which expression shall include his hrs, exs, ads, and assigns, where the context so requires or admits), 1; The sd — Co-operative Building and Land Society, Limited, a Society registered under the Industrial and Provident Societies Act, 18—, (hinafter called the Society, which expression shall include the assigns of the Society), 2 (b): WITNETH that in conson of the sum of £—, this day paid to the mtgor by the Society out of its funds, the rect whof is hby acknowledged, the mtgor hby covenants with the Society that the mtgor will repay to the Society the sd sum of £—, with interest at the rate of — per cent. per annum, within a term of — years and — calendar months to be computed from the — day of —, by equal weekly instalmts of £—, according to the rules of the sd Society, the first of such instalmts to be paid on the — day of —, and the last on the — day of —, AND WILL also duly and punctually pay to the Society all fines, dues, and monies which may, at any time during the continuance of this secy, become due or payable from the mtgor to the Society under the rules of the Society or otherwise, AND WILL, during the continuance of this secy, observe and perform all the rules of the Society: AND THIS INDRE ALSO WITNETH, *conveyance of freeholds or leaseholds as in preceding Precedent (c)*; AND THIS INDRE FURTHER WITNETH that for the conson aforesd the mtgor, as beneficial owner (see p. 74,

PRE-
XXV.
—

Wil-
nesseth.

Covenant
to repay
by instal-
ments,

to pay
fines,

and ob-
serve rules.

Further
witnesseth.

forms of mortgages and other instruments in the rules, s. 12 (8); and as to the discharge of mortgages on redemption, s. 12 (8, 9), and Schedule III.

(b) For copyholds add, "B., C., and D. trees appointed by and on behalf of the Society (hinafter called the trees, which expression shall include their hrs, exs, ads, and assigns, where the context so requires or admits)," 8.

(c) The variation for copyholds will be as at p. 130, note, modified so as to adapt it to the proviso for redemption in the present Precedent, which proviso may in that case be omitted, the shares being assigned "subjt to the like right of redemption as is hinbefore provd in the case of the said copyhd premes."

PREC.
XXV.
—

Assign-
ment of
shares in
the Society.
To the
Society.
Proviso for
redemp-
tion.

Power to
Society to
insure.

To enter
and to
appoint a
receiver.

To lease.

note), doth hby assign unto the Society, ALL THOSE — shares held by the mtgor in the Society, To HOLD the same unto the Society, subjt to the provo for redemption hinafter contd: PROVD ALWAYS, and it is hby agrd that the sd premes shall be redeemable on paymt by the mtgor to the Society of the sd sum of £—— and interest by the instalmts and in mner aforesd, and of all fines, dues, and monies which may at any time during the continuance of this secy become due or payable from the mtgor to the Society under the rules thof or otherwise: AND IT IS HBY agrd that in case the mtgor shall omit or neglect to keep the sd [freehd] premes insured from loss by fire or other casualties to the full value thof, or to produce to the Society or to any of their officers on demand the policy of such insurance or the rect for the current year's premium, or shall fail to keep the sd premes in good and tenantable repair and condon, the Society may insure to the full value and repair and keep insured and repaired the same at the expense of the mtgor, to be repaid to the Society on demand with interest at — per cent. per annum, and in the meantime to be a charge upon all the sd premes hby mtgd: AND IT IS FURTHER agrd that the Society may at any time hereafter without any further consent on the pt of the mtgor enter into the possion or into the rect of the rents of the sd [freehold] premes and may, whether the Society shall or shall not have entered into such possion or rect, appoint at the cost and sole risk of the mtgor a person to collect and receive such rents for the use and benefit of the Society at such commission as the Society shall think fit, and so that all the statutory provons respecting the appointmt of receivers of ppty in mtge and the powers and duties of such receivers and otherwise in relation thto shall apply to this secy except so far as the same are hby varied and subject to the provons herein contd: AND ALSO may after entering into possion as afsd grant any leases of the sd premes or any pt thof which mtgees in possion are by the Conveyancing and Law of Property Act, 1881, authorised to grant, all the provons of which Act

in relation to leases as well by mtgors as by mtgees shall apply to this secy: AND ALSO may absolutely sell or dispose of all or any of the sd mtged premes at such time, in such mner, and subjt to such condons, as the Society in their discretion may deem expedient, and may buy in or rescind or vary any contract for sale, and resell without being responsible for loss occasioned thby (d): PROVIDE ALWAYS that the Society shall not exercise the power of entering into possion or rect of rents hinbefore contd unless and until default shall have been made for — weekly meetings, or the powers of leasing and sale hinbefore contd unless and until default shall have been made for — weekly meetings of the Society, in the paymt of some instalmt or other monies which shall have become due on this secy or in the observance or performance of some of the rules of the Society or of the covenants herein contd: BUT no entry into possion, rect of rent, lease, or sale, which may be made in the exercise or intd exercise of any of the powers aforesd, shall be impeachable by reason of any breach of the provon lastly hinbefore contd, or any other impropriety or irregularity, and no pchaser or lessee from or other pson dealing with the Society shall be concerned to enquire whether any money is owing on this secy or into the right of the Society to exercise any of the sd powers: AND IT IS HBY further decld that the Society shall, out of the monies which shall arise from any exercise of the powers hinbefore contd, in the first place discharge all the expenses incurred in or about the rect thereof, or the exercise of the sd powers or otherwise in respect of the premes, And in the next place apply such monies in or towards satisfon of the monies owing on this secy (and for

PRZO.
XXV.

To sell.

Events in which powers are to be exercised.

Proviso in case of improper exercise of powers.

Trusts of monies received under powers.

(d) In the case of copyholds add, “and the trees shall, if necessary, concur with the Society in the exercise of any of the powers hinbefore contd, for the ppose of giving legal effect thto in such mner as the Society may require.”

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this ppose in case of a sale under the power hiebefore contd all the instalmts which would at any time afterwards become due under this secy, shall be considered as due and owing at the time of such sale), and shall pay the surplus (if any) to the mtgor as personal este. *Mortgagee's indemnity clause*, p. 61.

IN WITNESS, &c.

Schedule.

XXVI.

PREC.
XXVI.

MORTGAGE of FREEHOLDS for a TERM (a) to trustees to secure PRESENT Loan and FUTURE ADVANCES, under a POWER in a SETTLEMENT authorising the TENANT for LIFE to CHARGE a limited sum for his own benefit.

Recitals.
Settle-
ment.

PARTIES, A., mortgagor, 1; B., C., and D., mortgagees, 2; WHAS by an indre bearing date, &c., and expd, &c., the hereds intd to be hby mtged, were assured and limited to the use of the sd A. for his life with divers remrs over, and it was by the sd indre provd that it should be lawful for the sd A. at any time during his life by deed to charge all or any pt or pts of the sd hereds with the paymt of any sum or sums of money not exceeding in the whole £5000, and interest thereon at any rate not exceeding, &c., for his own absolute benefit, and to limit or appoint any term or terms of years in the sd hereds, or any pt or pts thof, to any pson or psons advancing the same for securing the repaymt thof with interest as afsd, with such power of sale and other provons as might be thought proper; *Agreement for loan of £1000*, p. 2, adding after the word, "thof," the words "and also of every other sum or sums which may hereafter be advanced or paid by the sd B., C., and D., or the survors or

(a) Compare Precedent X., of a mortgage in fee under a power.

survivor of them, or the exs or ads of such survivor, their or his assigns, to or on account of the sd A., his exs or ads, not exceeding togr with the sd sum of £1000 the principal sum of £5000" (b): NOW THIS INDRE WITNETH that in psuance of the sd agreemt, *Consideration*, p. 8, *form II., covenant by A. for payment of principal sum and future advances*, p. 10, *form IV., and interest after default*, p. 11, *form V.*: AND THIS INDRE ALSO WITNETH that in further psuance of the sd agreemt and for the conson afsd the sd A., as beneficial owner (c) in exercise of the power or authority for this ppose given to him by the hinbefore recited indre, and of every or any other power in this behalf him enabling, doth hby charge, *Parcels, Vol. I.*, p. 344, WITH the paymt to the sd B., C., and D., their exs, ads, and assigns, of the sd sum of £1000, and every other sum which may be advanced or paid as afsd, and the interest for the same resply at the rate afsd on or at the respive days or times hinbefore appointed for paymt thof resply: AND THIS INDRE ALSO WITNETH that in further psuance of the sd agreemt, and for the conson afsd, the sd A., as beneficial owner (c), in exercise of the power or authority for this ppose given to him by the hinbefore recited indre, and of every or any other power in this behalf him enabling, doth hby limit and appoint, ALL THE — and hereds and all other the premes hinbefore charged, To THE USE of the sd B., C., and D., their exs, ads, and assigns, for the term of 500 years from the day next before

PREC.
XXVI.Wit-
nesseth.
Covenant
for pay-
ment.Further
witnesseth.Charge of
parcels
with pay-
ment.Further
witnesseth.Appoint-
ment.To use of
mortgages
for term.

(b) This limit of amount of principal is mentioned as the power in the settlement requires it, otherwise it would not have been necessary, the security being good for any amount which the stamp is sufficient to cover. See the Stamp Act, 1870, s. 107.

(c) See p. 74, note. If express covenants for title were inserted the first branch would be "that the sd A. now has full power to charge and also to limit and appoint the sd premes hby mtged in mner and for the term afsd," and the covenants would otherwise be similar to those for leaseholds, p. 67, *mutatis mutandis*, with the omission of the covenants that the lease is good, and that rent and covenants have been and shall be paid and performed.

PREC.
XXVI.
—
Proviso for
redemption.

Power of
sale.

Proviso as
to primary
liability to
debt.

the date of these presents, subj't to the provo for redemption hinafter contd : *Proviso for redemption*, p. 20, *form x.*, on payment by, "the sd A., his hrs, exs, ads, or assigns, or any pson or psons interested in the equity of redemption of the sd premes hby mtged," saying, "then and in such case the sd term of 500 years hby created shall forthwith cease and determine ;" [*Joint account clause*, p. 39 ;] *Covenant to insure and repair*, p. 44, or *covenant supplemental to statutory power of insurance*, p. 46, if appropriate ; [*Add power of sale*, p. 22, if authorised by the power in the settlement, unless omitted in reliance on the statute, see p. 22, note, exerciseable, "without any further consent on the pt of the sd A., his hrs or assigns, or any other pson interested under the sd settlem't," the surplus sale moneys being made payable to, "the pson or psons for the time being entled to the equity of redemption of the sd mtged premes according to his or their rights and interests ;"] *Mortgagee's indemnity clause*, p. 61 : PROVD ALWAYS, and it is hby agrd, that as between the sd A., his hrs, exs, and ads, and the sd mtged premes, the sd mtged premes shall be primarily liable to the paymt of the monies intd to be hby secured ; *Proviso that mortgagees are not to be affected by foregoing declaration*, p. 39, *form xvi.* ; *Clause as to devolution of mortgagee's powers*, p. 63.

IN WITNESS, &c.

XXVII.

PREC.
XXVII.
—

MORTGAGE of an UNDIVIDED MOIETY of FREEHOLDS to secure the re-transfer of STOCK, and for payment in the meantime of SUMS equal to the DIVIDENDS. POWER of PARTITION. VARIATIONS where INTEREST on the SUM which would be produced by SALE of the STOCK is payable till RE-TRANSFER, and for a MORTGAGE to TRUSTEES (a).

(a) As to the propriety of trustees investing on a stock mortgage, see

PARTIES, A., mortgagor, 1 ; B., [C. and D.], mortgagee[s], P.B.C.
XXVII.
 2; *WHAS* under and by virtue of an indre dated, &c., and
 expd, &c., the sd A. is seised of the one undivided moiety Recitals.
 hinafter mtged, of the hereds hinafter described and the in- Seisin of
 heritance thof for an este in fee simple in possion: *AND* Agreement.
WHAS it has been agrd between the pties hto that the sd B.,
 [C. and D.,] should sell the sum of £—— Consolidated £3
 per cent. Annuities, to which he is entled, [they are entled
 on a joint account,] and pay the produce thof to the sd A.,
 upon the terms of having the repurchase in his name [their
 names] of the sd sum of £—— stock, togr with the paymt
 in the meantime of sums of money equal to the dividends
 thereon [of interest in the meantime on such produce at the
 rate hinafter mentd] secured in mner hinafter appearing ;
NOW THIS INDRE WITNETH, that in conson of the Wit-
 sd B., [C. and D.,] having sold the sd sum of £—— stock, nesseth.
 and having this day paid the sum of £—— sterling, the net
 sum produced by such sale, unto the sd A., *receipt, covenant* Covenant
by A. to re-transfer stock, and in the meantime to pay sums to re-trans-
equal to the dividends, [or to pay interest on the sum of fer stock
£——], p. 12 ; and to pay sums equal to dividends, [or and pay
interest] after default, p. 12 ; Second testatum as in Prec. I., interest.
p. 74, grant by A. as beneficial owner (b) of "ALL THAT ONE Further
undivided moiety of and in," Parcels, see Vol. I., p. 344, witnesseth.
omitting general words and estate clause, see Vol. I., pp. 357, Grant.
359, notes ; Habendum, p. 15 (c) ; Proviso for redemption,

Whitney v. Smith, L. R. 4 Ch. Ap. 513, where such a mortgage was held to be an improper investment under the ordinary powers of varying securities, 2 Dav. Prec. pt. II., p. 624, note. As to the stamp, see the Stamp Act, 1871, ss. 12, 13 and 106.

(b) See p. 74, note. The covenant for quiet enjoyment which this implies, under the Conv. Act, 1881, s. 7 (1, C.) is on default "in payment of the money" secured which is not quite appropriate to a stock mortgage, but the point is of no importance. If express covenants were inserted the covenant would be "if default shall be made in the transfer of the sd sum of £—— stock, or in paymt of any monies hby secured."

(c) In subsequent clauses insert the word "moiety," before "hereds."

PREC.
XXVII.

Declara-
tion that
stock be-
longs to
mortgagees
on joint
account (d).
Power of
sale.

p. 19, form VII. ; [*Declaration*, p. 89, by B., C., and D., that, "the sd sum of £—— stock so sold by them as afsd and the produce of the sale thof belonged to them on a joint account";] *Covenant to insure and repair*, p. 44, or *covenant supplemental to statutory power of insurance*, p. 46, if appropriate ; [*Power of sale*, p. 22, altered as follows, unless the statutory power is relied on (e), in the first clause giving power to sell and convey, say, "to sell the sd moiety hby mtged of the sd hereds and premes hinbefore described, or any pt or pts thof" (f), in the clause as to the events in which power is to be exercised say, "shall not exercise the power of sale hinbefore contd unless and until default shall have been made in making the transfer of the sd sum of stock, the transfer whof is intended to be hby secured, or some pt thof, and [he or] they shall have given a notice in writing to the sd A., his hrs, exs, ads, or assigns, to transfer such stock and to pay the monies for the time being owing on this secy, or left a notice, &c., and default shall have been made in transfer of such stock or some pt thof or in paymt of such monies or some pt thof for six calendar months from the time of giving or leaving such notice, or unless or until the whole or pt of some monies the paymt whof is intd to be hby secured as an equivalent for the dividends on the sd stock, [or, the whole or pt of some half-yearly paymt of

(d) The Conv. Act, 1881, s. 61, above, p. 39, note, applies to a mortgage for securing "money or money's worth," and therefore to a stock mortgage.

Clause in-
corporating
statutory
powers of
sale, and
appointing
receivers in
stock
mortgage.

(e) If the statutory powers of sale and appointing receivers (as to which, see pp. 22 and 55, notes), are relied on, the following clause should be inserted :—

"AND it is hby agrd that the powers of sale and appointing receivers conferred by statute on mtgees, and the provisions subsidiary or incidental to such respive powers, shall apply to this secy with the modifications rendered necessary by reason of these presents being a secy for the transfer of stock in lieu of the paymt of money."

(f) In the subsequent clauses, insert the word "moiety" before "hereds."

interest, the paymt whof is intd to be hby secured] shall be in arrear for *three* calendar months," *in the proviso for protection of purchasers say*, "or whether any default has been made in transfer of any stock, or in paymt of any monies intd to be hby secured, or whether any stock or monies remain owing on this secy," *in the trusts of purchase-money say*, "stock and monies for the time being owing on this secy," "surplus of the monies to arise or be received as afsd," *in the declaration at the end of the power of sale say*, "stock and monies owing"]; *Power to mortgagee to concur with co-owners in exercising powers*, p. 60, *form xxxv. (g)*; *Power of partition*, p. 60; *Mortgagee's indemnity clause*, p. 61; [*Clause as to devolution of powers of mortgagees*, p. 68.]

PREC.
XXVII.
—

IN WITNESS, &c.

XXVIII.

MORTGAGE of a BUILDING LEASE to a MARRIED WOMAN as a FEME SOLE under the MARRIED WOMEN'S PROPERTY ACT, 1882 (a), the mortgage MONEY to be ADVANCED by INSTALMENTS as wanted,

PREC.
XXVIII.
—

(g) If the powers of leasing in the Conv. Act, 1881, s. 18, are intended to operate, it would be proper, as the mortgage is of an undivided share, to provide that the provision (sub-s. 11) requiring that counterparts of leases executed by the mortgagor shall be delivered to the mortgagee, shall not apply in the case of leases of the entirety unless and until such counterparts shall come into the possession or power of the former.

(a) See p. 91, note. The mortgage-money being the wife's separate estate, The Married Women's Property Act, 1882, came into operation, whether she was married before or since the Married Women's Property Act, 1882, came into operation, under the 2nd or 5th section of the Act, and she may sue on the covenants (s. 1 (2)), and convey the estate and exercise the powers as a *feme sole*. It would, nevertheless, be desirable that the husband should be a party to acknowledge that the money is the wife's separate estate, to preclude questions as to this in future dealings; and the variations where he joins in the deed are therefore given.

The Married Women's Property Act, 1882.

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XXVIII.

and the LOAN to be continued for a TERM CERTAIN. POWER to MORTGAGEE to complete BUILDINGS on MORTGAGOR'S DEFAULT, &c. VARIATIONS where the HUSBAND of the MORTGAGEE is a PARTY.

*PARTIES, A., mortgagor, 1; B., the wife of C., of, &c., mortgagee, 2; [the sd C., 8]: Recite lease from K. to A. formally, setting out the covenant to build, see Vol. I., p. 325: AND WHAS in psuance of the sd recited covenant, the sd A. has commenced the erection of buildings on the piece of land demised by the sd indre of lease: AND WHAS the sd A. has requested the sd B. to lend him the sum of £—— for the ppose of enabling him to complete the sd buildings, which the sd B. has agrd to do out of monies belonging to her as her separate ppty independently of her sd husband, upon having the repaymt of the same with interest secured in mner hinafter appearing: AND WHAS upon the treaty for the sd loan, it was agrd that the sum of £——, pt of the sd sum of £——, should be advanced to the sd A. by the sd B. on the execution of these presents, and that the residue of the sd sum of £—— should be advanced by the sd B. to the sd A., by instalmts in mner and on the condons provd by the covenant of the sd B. hinafter contd: NOW THIS INDRE WITNETH that in conson of the sum of £——, now paid to the sd A. by the sd B., the rect, &c., and of the covenant of the sd B. hinafter contd for the loan to the sd A. of the further sum of £—— by the instalmts and on the condons hinafter mentd, *Covenant by A. with B. for payment of present and future advances, p. 10; and interest after default, p. 11; Further testatum, demise of premises comprised in lease to B., as in Precedent V., p. 79, "TOGR WITH all buildings and erections which now are, or which shall at any time during the term hby granted, be erected and standing on the sd piece of land and premes," for the term of the lease except the last day, subject to redemption; Usual proviso for redemption, p. 18; Declaration of trust of nominal reversion, p. 34; Covenant by B. with A. to make advances up to the**

Recitals.

Commence-
ment of
buildings.

Agreement
for loan.

Loan to be
by instal-
ments.

Wit-
nesseth.

Covenant
for pay-
ment.

Further
witnesseth.

Demise.

agreed limit for the completion of the buildings, p. 37, PREC. XXVIII.
 form XI.; *Proviso for continuance of loan for a term certain*,
 p. 35, adding the words, "and provided none of the events Loan to be continued for term certain.
 shall happen in which the obligation of the sd B., her exs, ads, or assigns to make or continue the sd advances is to
 cease as hinbefore mentd," or *specify these events at length* ;
 AND THE sd A. doth hby covenant with the sd B., her exs, Covenant by mortgagor to execute works.
 ads, and assigns, that he the sd A., his exs, ads, or assigns
 will proceed with and continue the erection of the sd
 buildings and the execution of the sd works in a proper mner
 and with due diligence in accordance with the sd recited
 covenant, and in order that the same may be completed
 within the time provd by the sd covenant: AND THAT in Power for mortgagee to enter and execute works.
 case the sd A., his exs, ads, or assigns shall make default
 in any such respect or shall in the judgmt of the sd B., her
 exs, ads, or assigns, have made such default, or in case the
 sd A., his exs, ads, or assigns shall become bankrupt, or
 shall make or enter into any arrangemt or composition with
 his or their creditors, then and in any such case it shall be
 lawful for the sd B., her exs, ads, or assigns, to enter upon
 the sd premes hby mtged, and to continue and complete the
 sd erections, buildings, and works, either by contract or by
 engaging workmen and providing materials and plant, and
 generally in such mner as she or they may think proper :
 AND THAT in such case, all sums of money which she or Sums expended to be a charge on premises.
 they shall expend thereon, with interest after the rate afsd
 from the time or respive times of expending the same, shall
 be repaid to her or them by the sd A., his exs, ads, or
 assigns, on demand, and until repaymt shall be charged on
 the sd mtged premes ; *Covenant by A. with B. to insure
 and repair*, p. 44, or *covenant supplemental to statutory pro-
 vision for insurance*, p. 46 ; [*Power of sale*, p. 27, unless
statutory power is relied on, see p. 22, note] ; *Mortgagee's in-
 demnity clause*, p. 61 : PROV'D ALWAYS and it is hby declared Proviso that mortgage money and security is to be
 [and the sd C. doth hby admit] that all the monies advanced
 and to be advanced by the sd B. to the sd A. as afsd are
 and will be monies belonging to the sd B. as her separate

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XXVIII.
—
the wife's
separate
property.

ppty independently of the sd C., and accordingly that all the monies hby secured and the secy hby effected for the same, and all powers and remedies hereunder, are and shall be the separate ppty of the sd B. independently of the sd C.; *Declaration that B.'s covenants are to bind her separate estate, p. 95.*

IN WITNESS, &c.

XXIX.

PREC.
XXIX.
—

MORTGAGE by TENANTS in COMMON of freeholds
subject to PERPETUAL Fee Farm RENTS. EXTEN-
SION of STATUTORY power of SALE.

Recitals.
Seisin
subject to
rent-
charges.

PARTIES, A. and B., mortgagors, 1; C., mortgagee, 2:
WHAS the sd A. and B. are seised of the hereds hby mtged as tenants in common in fee simple in possion in equal shares, subjt as to such of the same hereds as are first hinafter described to the paymt of a perpetual fee farm rent or yearly rent charge of £——, issuing and payable thereout under an indre dated, &c., and made, &c., and to the observance and performance of the covenants therein contd, and on the pt of the sd A. and B., their hrs and assigns, to be observed and performed, and subjt, as to such of the same hereds as are secondly hinafter described, to the paymt of a perpetual fee farm rent or yearly rent charge of £—— issuing and payable thereout under an indre dated, &c., and made, &c., and to the observance and performance of the covenants therein contd, and on the pt of the sd A. and B., their hrs and assigns, to be observed and performed, but free from any other charge or incumbrance; *Agreement for loan, p. 1:* NOW THIS INDRE WITNETH, that in psuance of the recited agreemt and in conson of the sum of £—— now paid by

Wit-
nesses:

the sd C. to the sd A. and B. (the rect whof they do hby
 resply acknowledge) *joint and several covenants by A. and B.*
for payment, p. 10 : AND THIS INDRE ALSO WIT-
 NETH, that for the conson afsd the sd A. and B., as bene-
 ficial owners (*see* p. 64, *note*), do and each of them doth hby
 grant unto the sd C., his hrs and assigns, *Parcels in two parts*,
see Vol. I. p. 844, omitting general words and estate clause,
see Vol. I., pp. 357, 359, notes : To HOLD the same UNTO AND
 TO THE USE of the sd C., his hrs and assigns, subjt as to the
 premes first hinbefore described to the paymt of the sd
 perpetual yearly rent charge of £——, limited or secured
 by the sd indre of, &c., and to the observance and perform-
 ance of the covenants in the same indre contd and on the
 pt of the sd A. and B., their hrs and assigns, to be observed
 and performed, and subjt as to the premes secondly hinbefore
 described to the paymt of the sd perpetual yearly rent charge
 of £——, limited or secured by the sd indre of, &c., and to
 the observance and performance of the covenants in the sd
 last mentd indre contd and on the pt of the sd A. and B.,
 their hrs and assigns, to be observed and performed, and as
 to all the premes subjt to the provo for redemption hinafter
 contd : PROVD ALWAYS that if the sd A. and B., or their
 respive hrs, exs, ads, or assigns, or any of them, shall pay to
 the sd C., his exs, ads, or assigns, the sd sum of £—— with
 interest for the same in the meantime at the rate of —— per
 cent. per annum on the sd —— day of —— next, then the sd
 C., his exs, ads, or assigns, will at any time thereafter upon
 the request and at the cost of the sd A. and B., or their respive
 hrs or assigns, reconvey the sd premes hinbefore assured unto
 and to the use of the sd A. and B., their respive hrs and
 assigns, in equal shares as tenants in common or as they
 shall direct subjt as hinbefore mentd : AND THE SD A. and
 B. do hby jointly and severally covenant with the sd C., his
 exs, ads, and assigns, that so long as any money shall remain
 owing on this present secy the sd A. and B., or their respive
 hrs, exs, ads, or assigns, will in exoneration of the sd C.,
 his hrs and assigns, pay the rents and observe and perform

PREC.
XXIX.

Also wit-
nesseth.
Grant.

Haben-
dum.

Proviso for
redemp-
tion.

Covenant
for pay-
ment of
rent-
charges.

PREC.
XXIX.

Power for
mortgagees
to pay
rents, and
insure, and
repair.

Extension
of statutory
power of
sale.

the covenants subj't to which the sd premes are hinbefore assured, and on demand deliver the rect's for such rents to the sd C., his hrs, exs, ads, or assigns, and keep the sd C., his hrs, exs, ads, and assigns, indemnified against all actions, proceedings, expenses, and claims, on account of the non-paymt of the sd rents or either of them, or the breach of the sd covenants or any of them: AND FURTHER, that, &c., *to insure and repair, see pp. 44, 46*: AND THAT in case and whenever default shall be made by the sd A. and B., their hrs, exs, ads, or assigns, or any of them, in paymt of the sd respive rents or either of them or any pt thof, or in observing or performing the covenants in the sd respive indres of, &c. contd as afsd or any of them, or in keeping the sd premes repaired or insured as afsd, the sd C., his hrs, exs, ads, or assigns, may pay such sums of money and do all such acts as may be requisite specifically to perform the covenants by the sd A. and B. hinbefore contd, and that all sums of money expended for any of the pposes afsd by the sd C., his hrs, exs, ads, or assigns, with interest thereon at the rate afsd from the time of the same resp'y having been so expended, shall be repaid by the sd A. and B., their hrs, exs, ads, and assigns, to the sd C., his exs, ads, or assigns, on demand, and until such repaymt shall be a charge upon all the sd premes hby mtgd: AND IT IS HBY agrd and declared that the power of sale conferred by statute on mtgees shall apply to this secy; AND THAT in case the sd A. and B., or either of them or their or either of their hrs or assigns, shall become bankrupt or enter into liquidation for the benefit of or make or enter into any arrangemt or composition with or for the benefit of their or his creditors, the sd power of sale shall become immediately exercisable without the necessity for giving any notice in that behalf to the sd A. and B., their hrs or assigns, or any of them: AND FURTHER that any sale under the afsd power may be made either in conson of a gross sum or of a perpetual rent charge or rent charges, to be payable to the sd C., his hrs and assigns, out of the premes sold, or partly in conson of a

gross sum and partly of such a rent charge or rent charges, and subjt to such covenants, exceptions, reservations, and restrictions, and with the reservation grant or creation of such rights or easemts as the sd C., his exs, ads, or assigns shall think fit: AND THAT on any sale such condons and provons may be made as to the paymt of or indemnity against the sd respive rents of £—— and £——, and for charging the same exclusively on any pt of the sd premes out of which the same are payable, or for apportioning the same between different pts of the same premes and securing the indemnity of the respive pchasers against the paymt of such respive rents or an undue portion thof as the sd C., his exs, ads, or assigns, shall think fit: AND THAT all rent charges made payable to the sd C., his hrs and assigns, on any sale shall be subjt to the same power of sale and right or equity of redemption as the premes sold in conson thof; *Mortgagee's indemnity clause*, p. 61.

PREC.
XXIX.
—

IN WITNESS, &C.

XXX.

BILL of SALE of PERSONAL CHATTELS, according to PREC. XXX.
the STATUTORY form, to be REGISTERED, with —
VARIATIONS (a).

PARTIES, A., mortgagor, 1; B., mortgagee, 2; WITNETH ^{Wit-}
that, in conson of the sum of £—— now paid to the sd A. ^{nesseth.}
by the sd B., the rect of which the sd A. hby acknowledges, ^{Considera-}
^{tion.}

(a) The following points require to be attended to in connection with Bills Law as to of Sale by way of mortgage. 1. A bill of sale of chattels which remain in the bills of possession of the assignor is void against creditors as being fraudulent within sale. the meaning of 13 Eliz. c. 5, s. 2, unless such possession is consistent with 13 Eliz. the deed; this however will usually be the case if the assignment is by way c. 5. of mortgage only: (see *Martindale v. Booth*, 3 B. & Ad. 498; *Alton v. Harri-* son, L. R. 4 Ch. Ap. 622; *Steward v. Lombe*, 1 Brod. & Bing. 506; and see also *Ex parte Games*, 12 Ch. D. 314); and there seems little if any risk of a bill of sale which is otherwise unimpeachable being invalidated under that statute.

PRINC. XXX. he the sd A. doth hby assign unto the sd B., his exs, ads, and assigns, ALL AND SINGULAR the several chattels and

Reputed
ownership
in bank-
ruptcy.

2. If the mortgagor is a *trader*, the bill of sale is liable to be defeated in the event of his bankruptcy by the reputed ownership clause in the Bankruptcy Act, 1869, 32 & 33 Vict. c. 71, s. 15, as to any chattels comprised in it being at the commencement of the bankruptcy (which by s. 11 relates back to the act of bankruptcy on which the order of adjudication takes place, subject to the provisions of s. 95 protecting dealings in good faith and for valuable consideration during the interval), in the possession, order, or disposition of the bankrupt with the consent of the mortgagee, *i.e.*, unless the mortgagee obtains or does his best to obtain possession of them before the commencement of the bankruptcy, or between the act of bankruptcy (provided he has no notice of it), and the order of adjudication (*Graham v. Furber*, 14 C. B. 134; *Krehl v. The Great Central Gas, &c., Co.*, L. R. 5 Ex. 289); and the result is not altered by a provision in the bill of sale authorising the mortgagor to remain in possession till default; *Freshney v. Carrick*, 1 H. & N. 653; *Spackman v. Miller*, 12 C. B. N. S. 659; *Ex parte Harding*, L. R. 15 Eq. 223; *Re Wright*, 3 Ch. D. 70. This enactment applies to liquidations by arrangement, s. 125, clause (5). But it does not apply to fixtures, even though in the nature of trade fixtures or otherwise removeable as between lessor and lessee; *Ex parte Barclay*, 5 De G. M. & G. 403; *Mather v. Fraser*, 2 K. & J. 536; *Whitmore v. Empson*, 23 Beav. 313. The registration of a bill of sale under the Bills of Sale Act, 1878, excluded the operation of the reputed ownership clause of the Bankruptcy Act (see s. 20); but that section has been repealed by the Bills of Sale Act, 1882, s. 15, so that registration is now of no avail for this purpose.

Mortgage
of all the
debtor's
property.

3. A mortgage of *all* or substantially all a man's property, whether he be in trade or not, is an act of bankruptcy, and void, as being fraudulent within the Bankruptcy Act, 1869, s. 6, if made to secure a past debt (*Re Wood*, L. R. 7 Ch. Ap. 302), unless the mortgage be made in pursuance of a *bond fide* agreement made at the time of the advance (*Harris v. Rickett*, 4 H. & N. 1; *Ex parte Izard*, L. R. 9 Ch. Ap. 271; *Re Barker*, 13 Ch. D. 245; but see *Ex parte Fisher*, L. R. 7 Ch. Ap. 636; *In re Gibson*, 8 Ch. D. 230; *Ex parte Burton*, 13 Ch. D. 102); but an assignment by way of mortgage of all a man's property for a substantial present advance (*Pennell v. Reynolds*, 11 C. B. N. S. 709); or for a past debt and a substantial present advance (*Mercer v. Peterson*, L. R. 2 Ex. 304, 3 Ex. 105; *Allen v. Bonnett*, L. R. 5 Ch. Ap. 577; *Ex parte Reed*, L. R. 14 Eq. 586; *Ex parte King*, 2 Ch. D. 256; *Ex parte Ellis*, 2 Ch. D. 797), provided the advance be *bond fide* for his benefit (*Re Colomere*, L. R. 1 Ch. Ap. 128), or for a past debt and future advances agreed to be made, and afterwards in fact made (*Ex parte Winder, re Winstanley*, 1 Ch. D. 290, *id.* on app. nom. *Ex parte Sheen*, 1 Ch. D. 560; *Ex parte Dann*, 17 Ch. D. 26), provided there is a binding agreement to make them (*Ex parte Cooper*, 10 Ch. D. 313; but see *Ex parte Wilkinson*, W. N. 1833, 16), is not within this enactment. A bill of sale which would be invalid under s. 6 in case of bankruptcy is equally so in case of liquidation by arrangement; *Ex parte Eyles*, L. R. 16 Eq. 99.

4. A voluntary conveyance made in favour of a creditor with the object of giving him a preference over the other creditors by a person becoming bank-

things specifically described in the schedule hto annexed FORM. XXX.
[AND ALL chattels and things which may hereafter during Parcels.

rupt or going into liquidation within three months afterwards is void against the trustee in bankruptcy or liquidation as being a fraudulent preference within the Bankruptcy Act, 1869, s. 92; but if the security be given under pressure, or in pursuance of an antecedent agreement, it will not be within that enactment; *Ex parte Craven*, L. R. 10 Eq. 648, 6 Ch. Ap. 70; *Smith v. Pilgrim*, 2 Ch. D. 127; and see *Ex parte London & County Bank*, L. R. 16 Eq. 391; *Ex parte Hodgkin*, L. R. 20 Eq. 746.

But the most important matters to notice are the requirements of the Bills of Sale Acts, 1878 and 1882, 41 & 42 Vict. c. 31 and 45 & 46 Vict. c. 43, the Bills of Sale Acts. latter of which came into operation on the 1st of November, 1882. Those Acts apply to all Bills of Sale of "personal chattels" given as security for the payment of money (with the exception so far as the Act of 1882 is concerned of debentures of companies, see s. 17 and *infra*); including (see the Act of 1878, s. 4, and the Act of 1882, s. 3) assignments, transfers, declarations of trust without transfer and other assurances of personal chattels, powers of attorney, authorities or licenses to take possession of personal chattels as security for any debt, and agreements whether intended or not to be followed by the execution of any other instrument by which a right in equity to any personal chattels or to any charge or security thereon is conferred; and the expression "personal chattels" (see the Act of 1878, s. 4) means goods, furniture, and other articles capable of complete transfer by delivery, and also (when separately assigned or charged) fixtures and growing crops, and (whether separately assigned or charged or not) "trade machinery" as defined by the Act of 1878, s. 5, *i.e.*, machinery used in any factory or workshop, other than fixed motive power, fixed power machinery, and the pipes for steam, gas, and water (see as to this, *Ex parte Moore, &c.*, 14 Ch. D. 379). But fixtures (other than "trade machinery" as so defined), and growing crops, when respectively assigned or charged *with* the land or buildings, by the *same* instrument, are not within the Acts (see the Act of 1878, s. 7). The following are the requirements of these Acts.

5. A bill of sale is by the Act of 1882 made void, *except as against the grantor*, in respect of any chattels which are not specifically described in a As to annexing schedule. schedule (s. 4), or in respect of any chattels which are so described of which the grantor was "not the true owner" at the time of its execution (s. 5); but this is not to apply to crops actually growing at the time, or to fixtures, plant or "trade machinery" substituted for those specifically described (s. 6). These provisions invalidate (except as against the grantor himself), securities on after-acquired chattels, except such as are acquired in substitution for those originally comprised in the security; as to mortgages of after-acquired chattels under the previous law, see 2 Dav. Prec. pt. 2, p. 172; *Collyer v. Isaacs*, 19 Ch. D. 342.

6. By the Act of 1882, s. 8, a bill of sale must truly state the consideration for which it was given, otherwise it is made absolutely void; as to As to stating consideration. what is a sufficient statement of the consideration see *Ex parte Carter*, 12 Ch. D. 908; *Ex parte National Mercantile Bank*, 15 Ch. D. 42; *Hamlyn v. Beteley*, 5 C. P. D. 327; *Ex parte Charing Cross, &c. Bank*, 16 Ch. D. 35;

PREC. XXX. the continuance of this secy be placed or brought in or upon the messuage, buildings, and premes situate, &c., now

The Credit Co. v. Pott, 6 Q. B. D. 295; *Hamilton v. Chainé*, 7 Q. B. D. 1, affirmed W. N. 1881, 76; *Ex parte Challiner*, 16 Ch. D. 260; *Ex parte Rolph*, 19 Ch. D. 98; *Ex parte Bolland*, 21 Ch. D. 543; all decided under a similar provision in the Act of 1878, which is repealed and re-enacted in the Act of 1882.

Bill of sale under £30 void. 7. A bill of sale given in consideration of any sum under £30 is made absolutely void (Act of 1882, s. 12).

Statutory form. 8. A bill of sale given by way of security for the payment of money by the grantor thereof is to be absolutely void unless made in accordance with the form in the schedule to the Act of 1882 (s. 9); see next page.

As to distress for rates and taxes. 9. A bill of sale is not to protect chattels against a distress for taxes or rates (Act of 1882, s. 14).

Restriction on right of seizure. 10. By the same Act, s. 7, chattels assigned under a bill of sale are not to be seized or taken possession of by the grantee for any other than the causes there specified, namely (1) default in payment of the money secured at the time provided for payment, or in the performance of any covenant or agreement necessary for maintaining the security; (2) bankruptcy of the grantor (a case in which if the grantor is in trade the grantee's title would generally have been defeated by the reputed ownership clause in the bankruptcy Acts, see p. 148), or a distress for rent, rates, or taxes; (3) fraudulent removal of the goods; (4) non-production on demand of the last receipts for rent, rates, and taxes; (5) an execution under a judgment against the grantor; and by s. 13 the chattels are to remain on the premises after seizure for five clear days before they are removed or sold, within which time the Court is empowered (by s. 7) to interfere to restrain the removal or sale on sufficient cause. If the mortgagee has power to take possession on demand and default of payment, a reasonable time must be allowed for payment before seizure; *Brighty v. Norton*, 3 Best & Smith, 305; *Massey v. Sladen*, L. R. 4, Ex. 13 (though a continuing possession which in its inception was premature, might be treated as a fresh taking of possession so as to be effectual; *Bramwell v. Eglinton*, 5 Best & Smith, 39). It is therefore desirable to give the mortgagee power, as far as the law permits, to take possession, although the money is not due and no demand of payment has been made.

Attestation. 11. A bill of sale is absolutely void unless attested as regards the execution by the grantor by one or more credible witness or witnesses, not being a party or parties. (Act of 1882, ss. 8, 10).

Registration. 12. By the same Act, s. 8, a bill of sale is made absolutely void, even as against the grantor, unless it is registered under the Act of 1878, s. 10, within seven clear days after execution, and the registration must be renewed every 5 years (Act of 1878, s. 11).

Renewal of bill. 13. The device formerly in use of evading registration by renewing the bill of sale from time to time within the time allowed for registration was put an end to by the Act of 1878, s. 9.

Fixtures and growing crops. 14. A mortgage of fixtures (other than "trade machinery" as defined by the Act of 1878, s. 5), or growing crops, together with the land or buildings, if contained in the same instrument, is altogether outside the Bills of Sale Acts, and free from any necessity for registration and the other restrictions of those Acts (see above and s. 5 of the Act of 1878); and a mort-

in the occupation of the sd A., whether in substitution for PREG. xxx.
the chattels and premes described in the sd schedule as —

gage of "power machinery," &c., whether separately from or with the Power land or buildings is outside the Acts (see the same clause) ; but a mortgage of machinery, fixtures of any other description or of growing crops separately from the land or buildings is within the Acts ; and a mortgage of "trade machinery" Trade machinery. whether separately or together with the land is within the Acts.

The following is a copy of the schedule to the Act of 1882 :—

"FORM OF BILL OF SALE.

This indenture made the day of between A. B. of of the one Statutory part, and C. D. of of the other part, Witnesseth that in consideration of form of the sum of £ now paid to A. B. by C. D., the receipt of which the said bill of sale. A. B. hereby acknowledges [*or whatever else the consideration may be*], he, the said A. B. doth hereby assign unto C. D., his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £ , and interest thereon at the rate of per cent. per annum [*or whatever else may be the rate*]. And the said A. B. doth further agree and declare that he will duly pay to the said C. D. the principal sum aforesaid, together with the interest then due by equal payments of £ on the day of [*or whatever else may be the stipulated times or time of payment*]. And the said A. B. doth also agree with the said C. D. that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*].

Provided always, that the chattels hereby assigned shall not be liable to seizure, or to be taken possession of by the said C. D. for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment, Act, 1882.

IN WITNESS, &c.

Signed and sealed by the said A. B. in the presence of me E. F. [*add witness's name, address, and description*]."

Mortgages of chattels by companies require separate consideration. Such a Mortgage mortgage was within the Bills of Sale Act, 1878, except that it did not require of chattels registration as against the general creditors in a winding up ; *Re Marine by com-Mansions Co.*, L. R. 4 Eq. 601 (decided under the repealed Act of 1854, but panies. which was similar in this respect to the Act of 1878) ; unless this was altered by the provision in the Judicature Act, 1875, s. 10, making the rules in bankruptcy as to certain matters applicable in the winding up of companies, as to which see *Re Stockton, &c., Co.*, 10 Ch. D. 335 ; *Moor v. Anglo Italian Bank*, 10 Ch. D. 681 ; *Re Crumlin Viaduct Works Co.*, 11 Ch. D. 755. The Bills of Sale Act, 1882, s. 17, provides that nothing in that Act shall apply to any "debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels and effects of such company." It is conceived that no meaning can possibly be attributed to the word "debenture" as used in this section which would restrict its application to any particular class of securities given by companies, and that it has the effect of exempting all mortgages and securities by companies from the operation of the Bills of Sale

PREC. XXX. mentd in the 6th section of the Bills of Sale Act (1878) Amendmt Act, 1882, or otherwise] by way of secy for the sum of £——, and interest thereon at the rate of £—— per cent. per annum; AND THE sd A. doth further agree and declare that he will duly pay to the sd B. the principal sum afsd, togr with the interest then due, on the —— day of —— next, and, in case of default in such paymt, will pay to the sd B. interest on the sd principal sum thereafter on the —— day of —— and the —— day of —— until paymt thof; [Or covenant for payment by instalments, p. 13, form IX., or

Covenant
for pay-
ment.

Act, 1882; but although that Act (so far as is consistent with its tenor), is (by s. 3) to be construed as one with the Act of 1878, the proviso in s. 17 does not appear to extend to the Act of 1878, which in that case remains in full force (inclusive of the portions repealed by the Act of 1882), so far as regards securities given by companies. Compliance with the requirements of the Act of 1878 cannot therefore safely be dispensed with in the case of companies. These are: 1. As to the consideration being stated (s. 8); 2. As to attestation by a solicitor (ss. 8, 10), and registration (ss. 8, 10, 11), neither of which, however, is necessary to give validity to the deed as against the company themselves (see as to attestation, *Davis v. Goodman*, 5 C. P. D. 128). It seems that by s. 20, registration would exclude the application of the reputed ownership clause in the Bankruptcy Act, 1869, if that clause is imported into winding up by the Judicature Act, 1873, s. 10 (see above). The distinctions above adverted to as to fixtures and growing crops, so far as they depend on the Act of 1878, are also applicable to companies.

Remarks
on the Bills
of Sale Act,
1882.

The impediments which the late Act has imposed in the way of securities (other than those of companies) upon chattels, including trade machinery, are such as to render such securities too precarious to be of much utility even when registered, which is absolutely necessary to make them of any avail even as against the grantor. The requirement that every "bill of sale" shall be in accordance with the form in the schedule to the Act, which contains a formal assignment of the chattels, is necessarily inapplicable to some instruments (such as a declaration of trust without transfer) which are included in the definition of a "bill of sale;" and as to ordinary bills of sale in which the chattels are assigned, gives rise to much doubt as to the extent to which additions and variations may be introduced into the statutory form; but recitals and provisions as to the time and mode of payment of the principal and interest, may clearly be inserted; and there appears to be no objection to the money being made payable *on demand*; and a mortgage of land or other property, may doubtless be contained in the same instrument; and provisions as to the "maintenance," and "defeasance," of the security are expressly authorised to be inserted; there would presumably also be no objection to the addition of clauses as to the mode of realising the security conforming to the other requirements of the Acts and the general law. But caution must, of course, be observed in this. The above precedent is in the statutory form, with such variations and additions as appear to be allowable.

any of the other provisions at pp. 84—87 as to the time and mode of payment which may be applicable, mutatis mutandis ;] PRINC. XXX.

PROVD ALWAYS, and it is hby agrd and decl'd that, in case the sd A., his exs or ads, shall at any time make default [in paymt of any of the monies hby secured at the time hby appointed for paymt thof, or] in performance or observance of any of the covenants or agreemts herein contd [or shall become bankrupt or enter into liquidation for the benefit of or compound with his or their creditors] or if any event mentd in the 7th section of the Bills of Sale Act (1878) Amendment Act, 1882, shall happen, the whole of the principal monies hby secured with the interest due thereon up to that time shall become immediately payable without the necessity for any demand of paymt being made ; AND IT IS HBY AGRD and decl'd that it shall be lawful for the sd B., his exs, ads, or assigns, on the happening of any of the events mentd in the sd 7th section of the afsd statute either by himself or themselves, or his or their servants or agents, to seize or take possion of all or any of the sd chattels and things hby assigned, and either to remove the same (subj't to the provons of the afsd statute) or to remain in possion thof without removing the same, and also to relinquish possion of the same, and again to retake and retain possion thof without invalidating this secy, and for the pposes afsd, or any of them, or for any ppose connected thwith, to have full liberty of ingress, egress, and regress to and from the messuage [farm, farmhouse], buildings and premes in or upon which the sd chattels and things are or may be, and to break open any outer or inner doors or windows (b) ; AND AT any time after such seizure or taking possion (subj't to the provons of the statute hinbefore mentd) to sell the sd chattels and things or any of them psuant to the power of sale conferred on mtgees by statute (c) [but without any necessity for giving any notice to the sd A., his exs, ads, or assigns, prior to such sale] ; AND THE sd A. hby further agrees with the Mortgage money to become immediately payable in certain events. Power to mortgagees to take possession according to statute. Power of sale. Covenant

(b) This authority may be lawfully given provided the entry is unopposed. See *Edwick v. Hawkes*, 18 Ch. D. 199.

(c) See the Conv. Act, 1881, s. 19, p. 22, note.

PREC. XXX. sd B. that he the sd A., his exs, ads, or assigns will, during the continuance of this secy, at all times [keep up the value of the chattels and things for the time being comprd in or subj to this secy to the sum of £ — at the least], and also, *to insure against fire and to keep in repair, form XXIII., p. 44, or provisions as to insurance supplemental to the statutory provisions, form XXIV., p. 46*; AND THAT it shall be lawful for the sd B., his exs, ads, and assigns, at all reasble times during the continuance of this secy, to enter into or upon the sd messuage [farm, farmhouse], buildings, and premes, to view the state of the sd chattels and things, and take inventories thof; *Mortgagees' indemnity clause, p. 61*; **PROVD ALWAYS**, that the chattels hby assigned shall not be liable to seizure or to be taken possion of by the sd B. for any cause other than those specified in sect. 7 of the Bills of Sale Act (1878) Amendment Act, 1882 (d).

to keep up
value of
chattels.

Power to
mortgagee
to enter
and inspect
premises.

Proviso as
to seizure.

IN WITNESS, &c. (e).

The Schedule above referred to.

[Schedule.]

Signed and sealed by the sd A. in the presence of me, C.
[add witness's name, address, and description].

(d) The following variation may be made where the security is given under pressure for an antecedent debt.

Variation
where
security
given under
pressure.

"WHAS the sd A. is indebted to the sd B. in the sum of £ —; AND WHAS the sd B. has commenced an action in the — Division against the sd A. for the recovery of the sd sum of £ —; AND WHAS it has been agrd between the sd A. and B. that the sd B. should stay all proceedings in the sd action upon having the repaymt of the sd sum of £ —, togr with his costs of the sd proceedings amounting to £ —, with interest at the rate hinafter mentd secured in mner hinafter appearing; NOW THIS INDRE WITNETH that, in psuance of the sd agreemt and in conson of the sd sum of £ — so owing by the sd A. to the sd B. as afsd and of the premes, &c."

(e) To be registered, see p. 150, note.

XXXI.

MORTGAGE of a FREEHOLD WORKSHOP or FACTORY,
fixed and moveable MACHINERY, and PLANT, in-
tended to be REGISTERED under the BILLS OF SALE
 ACTS (a). PREC.
XXXI.

PARTIES, A., mortgagor, 1 ; B., mortgagee, 2 ; WHAS the sd Recitals.
 A. is seised in fee simple in possion of the messuage, factory, Seisin of
 and hereds hby granted ; AND WHAS the sd A. carries on mortgagor.
 the trade of — on the sd factory, and is absolutely entled Title to
 to the fixtures and machinery used in or attached to such fixtures
 factory, such pts of the sd fixtures and machinery as are and machi-
 not trade machinery within the meaning of the Bills of Sale nery.
 Act, 1878, being specified in the 1st pt of the schedule
 hto (b), and such pts of the sd machinery as are trade machi-
 nery within the sd statute being specified in the 2nd pt of the
 schedule hto, and is also entled to the moveable machinery
 and plant specified in the 3rd pt of the schedule hto ; *Agree-*
ment for loan, p. 1, form I. ; NOW THIS INDRE WIT- Wit-
 NETH that, in psuance of the sd agreemt, and in conson of nesseth.
 the sum of £ — now paid to the sd A. by the sd B., the rect
 of which the sd A. hby acknowledges, the sd A. as bene-
 ficial owner (*see* p. 74, *note*) doth hby grant unto the sd B., Grant of
 his hrs and assigns, *freehold parcels, see Vol. I., p. 344, omitting* freeholds
the general words and estate clause, see Vol. I., pp. 357, 359,
notes ; AND ALSO all the fixtures and machinery which are and fixed
 described in the 1st pt of the schedule hto, and all other, if machinery.
 any, the fixtures and machinery not being trade machinery
 which are now or may hereafter during the continuance of
 this secy be affixed to the sd factory and hereds hby granted,
Habendum subject to redemption, p. 15, form I ; AND THIS

(a) See the notes to the last precedent.

(b) There is no absolute necessity to make a schedule of the fixtures and machinery not being trade machinery, but it may be convenient to do so, and perhaps difficult to avoid it.

PREC.
XXXI.

Also wit-
nesseth.
Assign-
ment of
trade
machinery,
and plant,
&c.

Security to
attach
upon after-
acquired
machinery,
&c.

INDRE ALSO WITNETH that, in further psuance of the sd recited agreemt, and in conson of the premes, he, the sd A., doth hby assign unto the sd B., his exs, ads, and assigns, ALL AND SINGULAR the trade machinery, moveable machinery, plant, chattels, and things specifically described in the 2nd and 3rd pts of the schedule hto annexed [and all trade machinery, moveable machinery, plant, chattels, and things which may hereafter, during the continuance of this secy, be placed or brought in or upon the sd premes hby granted or any pt thof, whether in substitution for the machinery and premes described in the 2nd and 3rd pts of the sd schedule hto as mentd in the 6th section of the Bills of Sale Act (1878) Amendment Act, 1882, or otherwise] by way of further secy for the paymt of the sd sum of £—, and the interest thereon; *Covenant for payment of principal and interest and any subsidiary provisions, see last Precedent; Provision as to events in which mortgage money is to become immediately payable, and in which mortgagee may take possession of chattels, see last Precedent; Covenant by A. to insure and repair, p. 44, or the short form of covenant to insure in reliance on the statute, p. 46, form XXIV.; Power to mortgagee to enter and inspect premises, as in last Precedent;* [AND IT IS HBY AGRD that this secy shall, as far as the law will permit, affect and attach upon any fixtures, machinery, and plant which may from time to time during the continuance of this secy be used in, attached to, or brought upon the freehd hereds hby mtged, whether in substitution for any of the like fixtures, machinery, or plant hby mtged, or otherwise;] *Mortgagee's indemnity clause, p. 61; PROV'D ALWAYS, that the chattels and trade machinery, hby assigned shall not be liable, &c., as in last Precedent(c).*

[Schedule.]

IN WITNESS, &c.

Signed and sealed, &c. (*as in last Precedent*).

(c) The last clause should not, of course, extend to the fixtures other than trade machinery. The statutory power of sale is left to operate, as to which, see p. 22, note.

XXXII.

MORTGAGE by a limited COMPANY of a FREEHOLD and LEASEHOLD COLLIERY, fixed and moveable MACHINERY and PLANT, to secure an ACCOUNT CURRENT with a banking firm (a), where the security is NOT to be REGISTERED as a BILL OF SALE. VARIATIONS where the COLLIERY belongs to a FIRM, and the TRADE MACHINERY and MOVEABLE plant are EXCLUDED from the security, and where the BANK is a LIMITED COMPANY (b).

PREC.
XXXII.

PARTIES, The — Co, Limited [A., B., and C. carrying on business in coptnship togr as colliery proprietors at — under the firm of A. & Co.] (hinafter called the mtgors), 1; D. E. and F., carrying on business in coptnship togr as bankers at — under the firm of D. and Co. [the — Banking Co., Limited] (hinafter called the mtgees), 2:

WHAS the mtgors carry on their business of colliery proprietors at the collieries and works known as, &c., situate, &c., which are partly of freehd and partly of leasehd tenure; AND WHAS the freehd portion thof being the hereds hby granted were by an indre, dated, &c., conveyed or assured to the use of the mtgors in fee simple [as joint tenants for the pposes of their sd coptnship]: AND WHAS the leasehd portion of the sd colliery and premes is held under an indre of lease dated, &c., and expd to be made, &c., whby, *recite mining lease to the mortgagors, setting out the parcels and the clauses having reference to the erection and removal of machinery, &c., Vol. I., p. 325*; AND WHAS the mtgors are

Recitals.
Mortgagors
carry on
business.
Title to
freeholds.

Title to
leaseholds.

(a) As to mortgages to secure future advances, see p. 32 note.

(b) As to mortgages of chattels and fixtures, see p. 147, note, and as to mortgages by companies, see p. 151, note, and on the general subject of mortgages by companies, see 2 Dav. Prec., part 2, p. 673, note. Compare Prec. XLIII., post, of an equitable mortgage to bankers; for a form of mortgage to a Banking Company constituted under 7 Geo. 4, c. 46, see 2 Dav. Prec., part 2, p. 353; and see the note to that precedent, p. 381, as to the constitution of Banking Companies.

PERC.
XXXII.
—
fixed ma-
chinery(f).

Title to
moveable
machinery.

Account
current
kept.
Advances
by bank.

entled to certain fixed machinery, buildings, engines, rails, turntables, erections, and other fixtures erected or fixed on the sd freehd and leasehd hereds [the fixed machinery and other fixtures on the sd freehd hereds being described in the 1st schedule hto, the fixed machinery and fixtures on the sd leasehd hereds which the mtgors are not entled to remove, having regard to the covenants in the sd lease, being described in the 1st pt of the 2nd schedule hto, and the fixed machinery and fixtures on the sd leasehd hereds which are removeable by the mtgors being described in the 2nd pt of the sd 2nd schedule]: AND WHAS the mtgors are also possessed of moveable machinery, engines, waggons, trucks, tools, implemts, plant and effects belonging to or used in connection with the sd colliery and works [the parlars whof are specified in the 3rd schedule hto], all of which, togr with any other moveable machinery, &c., which may, at any time during the continuance of the secy intd to be hby effected, be in or upon or belonging to the sd collieries, works, and premes, or used in or about or in connection with the same, are hinafter called the plant: AND WHAS the mtgors keep an account [for the pposes of their sd coptnship in their ptnship name of A. and Co.] with the mtgees: AND WHAS the mtgees may from time to time be under advance to or on account of the mtgors in respect of bills or acceptances discounted for them or otherwise in the usual course of such banking business, and the mtgees have also agrd to make advances to the mtgors by way of loan by permitting them to overdraw their banking account or granting them other accom-

Variations
where the
mortgagors
are a firm.

(f) If the mortgagors are a firm, the security, as it is not to be registered, cannot extend to chattels or "trade machinery." In that case it will be most convenient to recite the title to the fixed machinery, &c., generally, as in the text, without a schedule. The recital of title to, and assignment of the moveable machinery, &c., will be omitted, and the grant of the freeholds and demise of the leaseholds and fixed machinery, &c., will be qualified by an exception of "such portions of the sd machinery and other things afsd as are in the nature of trade machinery within the meaning of the Bills of Sale Act, 1878," and consequential alterations will be made in the rest of the draft.

modation upon an agreemt that all monies which shall become owing on balance of account or otherwise from the mtgors to the mtgees with interest, should be secured in mner hinafter appearing: NOW THIS INDRE WITNETH that in psuance of the recited agreemt, and in conson of the premes, the mtgors hby [jointly and severally] covenant with the mtgees and their [exs, ads, and] assigns, that the mtgors, &c., *covenant for payment of balance due on account current on demand*, p. 14, *mutatis mutandis*; AND THIS INDRE ALSO WITNETH that in further psuance of the sd recited agreemt and for the conson afsd, the mtgors as beneficial owners (g) do [and each of them doth] hby grant unto the mtgees and their [hrs and] assigns, *Freehold parcels*, see Vol. I., p. 844, AND ALSO all and singular the fixed machinery, buildings, engines, rails, turntables, erections, and fixtures now erected, fixed, or being on the sd premes hby granted, or any pt thof [or, "described in the sd 1st schedule hto"], AND all other the fixed machinery, &c., *as above*; which may at any time hereafter during the continuance of this secy be erected, fixed, or placed upon the same premes or any pt thof, *omitting general words and estate clause*, see Vol. I., pp. 857, 859, notes: To HOLD the same hereds, fixtures, and premes UNTO AND TO THE USE of the mtgees and their [hrs and] assigns, subjt to the provo for redemption hinafter contd: AND THIS INDRE ALSO WITNETH that in further psuance of the recited agreemt and for the conson afsd, the mtgors as beneficial owners (g), do [and each of them doth] hby demise (h) unto the mtgees and their [exs, ads, and] assigns, ALL THOSE the pieces of land, mines or beds of coal, powers, liberties, authorities, and premes by the hinbefore recited indre of lease expd to be demised or granted, AND ALSO all and singular the fixed machinery, buildings, engines, rails, turntables, erections and fixtures now erected, fixed, or being on the sd premes hby demised, or any pt thof [or, "described in the 1st and

PRMO.
XXXII.

Wit-
nesseth.

Covenant
to pay
balance on
demand.

Further
witnesseth.

Grant.

Freehold
parcels and
machinery.

Haben-
dum.

To mort-
gages.

Further
witnesseth.

Demise.

Leasehold
parcels.

Machinery.

(g) See p. 64, note, p. 74, note.

(h) As to mortgages of leaseholds by demise, see. p. 80, note.

PREC.
XXXII.

Haben-
dum.
To mort-
gages.

Further
witnesseth.

Assign-
ment.

Removable
machinery
and plant.

Haben-
dum.
To mort-
gages.

Proviso for
redemp-
tion.

2nd pts of the sd 2nd schedule hto]: AND ALL other fixed machinery, &c., *as above*, which may at any time hereafter during the continuance of this secy be erected, fixed, or placed upon the sd last mentd premes or any pt thof (except such portions of the sd machinery and other things last afsd as are removeable by the lessees), To HOLD all the premes hby demised UNTO the mtgees and their [exs, ads, and] assigns, for the residue of the sd term of — years granted by the sd indre of lease, except the last day thof, subjt to the provo for redemption hinafter contd: AND THIS INDRE ALSO WITNETH that in further psuance of the sd agreemt, and for the conson afsd, the mtgors as beneficial owners (*d*), hby assign unto the mtgees and their assigns, ALL the fixed machinery, &c., *as above*, which now are or hereafter during the continuance of this secy may be erected, fixed, or placed upon the sd leasehd premes, and are or shall be removeable by the lessees, AND ALSO all the plant and all coals and minerals which now are or which at any time during the continuance of this secy shall have been raised and be on any pt of the sd freehd and leasehd premes hby mtged resply, To HOLD all the same premes UNTO the mtgees and their assigns, subjt to the provo for redemption hinafter contd, PROVD ALWAYS, and it is hby agrd, that if the mtgors or their assigns [the mtgors or the psons or pson hereafter constituting the sd firm of A. and Co., or any of them, their or any of their hrs, exs, ads, or assigns] shall on demand or without any demand being made pay to the mtgees [or the psons or pson hereafter constituting the sd firm of D. and Co.] or their [or his respive exs, ads, or] assigns, or to one of the cashiers of the sd Bank the balance which shall for the time being be owing as hinbefore mentd psuant to the covenant hinbefore contd, then the mtgees, or their [exs, ads, or] assigns shall at any time thereafter upon the request and at the cost of the mtgors or their assigns [the mtgors, their hrs, exs, ads, or assigns] reconvey, surrender, or assign the sd respive premes hby granted,

(d) See p. 64, note, p. 74, note.

demised, and assigned resply unto the mtgors and their assigns [the mtgors, their hrs, exs, ads, and assigns according to the nature of the sd respie premes and their rights and interests therein] or as they shall direct; *Declaration of trust of nominal reversions of leaseholds*, p. 34: AND THE mtgors hby [jointly and severally] covenant with the mtgees and their [exs, ads, and] assigns, that the mtgors [and their respie hrs, exs, ads, and assigns] will at all times during the continuance of this secy keep up the total value of the fixed and moveable machinery, fixtures, plant, and effects comprd in or subjt to this secy to £—— at the least, and also will keep all the sd buildings, machinery, engines, rails, turntables, erections, fixtures, plant, and premes hby mtged in good repair and working order, and will keep such of the same premes as are or shall be of an insurable nature insured against loss or damage by fire, *continue covenant for insurance, &c.*, p. 44, *mutatis mutandis*, or *substitute covenant for insurance supplemental to statutory power if deemed sufficient*, p. 46; AND IT IS HBY agrd that all buildings, fixed or moveable machinery, engines, rails, turntables, fixtures, plant, coal, effects, and things which may at any time during the continuance of this secy be erected, placed, or brought upon any of the sd hereds and premes hby mtged, shall be subjt to this secy and to all the provons herein contd: AND IT IS HBY also agrd that it shall be lawful for the mtgees or their [exs, ads, or] assigns, or their manager or any other officer or agent, or any pson nominated either in writing or otherwise by them at any time or times hereafter without any further consent on the pt of the mtgors or their assigns [the mtgors or any of them, their or any of their hrs, exs, ads, or assigns] to take possion of all and singular the machinery, plant, coals, and other effects and things hby mtged, which shall for the time being be on or about the sd freehd and leasehd premes respively (except such machinery and things affixed to the sd leasehd premes as are not removeable), and either to remove and carry away the same or to remain in possion thof without removing the same, and

PASO.
XXXII.

Covenant
by mort-
gagors to
keep in
repair and
insure.

Future
plant to
be subject
to mort-
gage.

Power to
mortgagees
to take
possession.

PRINC.
XXXII.
—

Power to
mortgagors
to deal
with
chattels
and fix-
tures com-
prised in
security.

Power of
sale (b).

also to relinquish possession of the same and again to retake and retain such possession without invalidating this security, and for the purposes aforesaid or any of them, or for any purpose connected therewith, to have full liberty of ingress, egress, and regress to and from the said mortgaged premises and every part thereof at all reasonable times, and to break open any outer or inner door or window (a) : PROVIDED ALWAYS, and it is hereby agreed that, until the mortgagees or their [executors, administrators, or] assigns shall have given notice in writing to the mortgagors or their [husbands, executors, administrators, or] assigns, of their intention to take possession of the said fixed and moveable machinery, plant, and effects hereby mortgaged, it shall be lawful for the mortgagors or their [husbands, executors, administrators, or] assigns to sell or otherwise deal with the same as if these presents had not been executed, provided the value thereof shall be kept up as hereinbefore provided : PROVIDED ALWAYS, and it is hereby agreed, that it shall be lawful for the mortgagees, or their [executors, administrators, or] assigns at any time hereafter without any further consent on the part of the mortgagors or their assigns [the mortgagors or any of them, or any of their husbands, executors, administrators, or assigns] to

(a) See p. 153, *note*.

(b) The statutory power of sale may be relied upon, in which case the following clause should be added :

Provision
as to
statutory
power of
sale where
mortgage
money pay-
able on
demand,
&c.

“AND IT IS HEREBY agreed that the power of sale conferred by statute on mortgagees shall apply to this security, and that, for the purpose of any sale under such power, the monies hereby secured shall be deemed to have become due immediately after the date of these presents although no demand of payment shall have been made.”

The following may also be added :

“And that in case the mortgagors shall enter into liquidation, whether compulsory or voluntary [the said firm of A. and Co, shall become bankrupt or enter into liquidation for the benefit of or compound with their creditors], the said power of sale shall become immediately exercisable without any necessity for giving any notice prior to the exercise thereof.”

A clause authorising or prohibiting the sale of the fixtures, &c., separately, as in the text, may also be proper.

sell all or any pt or pts of the sd premes hby mtged either togr or in parcels [and as to the sd fixtures, machinery, engines, rails, turntables, erections, and fixtures (other than such as are affixed to the sd leasehd premes and are irremovable) either togr with or separately and apart from the buildings or soil to which the same may be annexed (a)], *continue power of sale and ancillary clauses*, p. 29, form IV., *the notice to be given*, "to the mtgors or their assigns [the mtgors, their hrs, exs, ads, or assigns, or some or one of them]," or left, "[at the registered office of the mtgors or] at or upon some pt of the sd mtged premes," *the receipt clause will run*, "AND IT IS HBY also agrd that upon any such sale as asfd, the rect of the mtgees, or their [exs, ads, or] assigns, shall, &c.," *the surplus purchase monies to be made payable* "to the mtgors or their [exs, ads, or] assigns as psonal este;" *Mortgagee's indemnity clause*, p. 61 (b): Proviso as to changes in firms. PROVD (c) ALWAYS, and it is hby agrd that these presents are intd to be a continuing secy for the balance from time to time owing on the account of the mtgors [the sd coptnship firm of A. and Co.] to the sd coptnship firm of D. and Co. [the mtgees] notwithstanding any change in [the sd firm of A. and Co., or] the sd firm of D. and Co., by the death or retiremt of any member or members thof or the

PREC.
XXXII.

(a) See the Bills of Sale Act, 1878, s. 7, p 149, note. If so intended, substitute for this bracket "but so that the sd fixtures, &c., shall not be sold separately or apart from the buildings or soil to which the same are annexed."

(b) It would seem that the Bills of Sale Act, 1882, does not apply to any security by a Company upon its "capital stock" or effects; see the Act, s. 17, and p. 151, note; and that an attornment clause or power of distress (for forms of which, see pp. 52-54), might be inserted in a mortgage by a Company so as to be effectual, at any rate against the company itself, without attestation or registration according to the Bills of Sale Act, 1878, see p. 151, note. But as to the chattels of the Company which are expressly included in the mortgage in this case, the insertion of either of these clauses would add nothing to the security. As to inserting attornment clause or power of distress in mortgage by company.

(c) This clause will be omitted if both mortgagors and mortgagees are Companies.

PREC. introduction of any new member or members or otherwise :
 XXXII. PROVD ALWAYS, and it is hby agrd and decd, that these
 — Security presents shall not be registered as a Bill of Sale.
 not to be registered. IN WITNESS, &c.

XXXIII.

PREC. MORTGAGE by LIMITED COMPANY of FREEHOLD and
 XXXIII. LEASEHOLD IRONWORKS, MINES, and MINING PLANT,
 — for securing payment of existing and future BILLS
 of EXCHANGE, subject to a PRIOR CHARGE, the
 security NOT being intended to be REGISTERED as
 a bill of sale. Short Form (a).

Recitals. 1; A., mortgagee, 2: WHAS the sd A. has drawn on the Co,
 Drawing of bills. and the Co have accepted the bills of exchange mentd in
 the schedule hto, and the sd A. may from time to time, in
 the usual course of business, draw on the Co and the Co

Agreement. may accept other bills of exchange: AND WHAS it has been
 agrd between the Co and the sd A. that the paymt of the sd
 present and future bills of exchange at maturity shall be
 secured in mner hinafter appearing: NOW THIS INDRE

Wit- WITNETH that in psuance of the sd agreemt, and in con-
 nesseth. son of the prêmes (b), the Co as beneficial owners (*see* p. 74,

(a) See p. 149, note; and the last precedent.

(b) The covenant for payment is omitted, lest it should prejudice the remedy on the bills; see 2 Dav. Prec., pt. 2, p. 608, note. As there is a prior mortgage, this deed might be in the form of a charge, instead of a conveyance with a proviso for redemption, thus:—
 “The Co as beneficial owners (*see* p. 137, note), do hby charge all and singular, &c., *Parcels as in the text, subject to the prior mortgage, with the paymt at the maturity thereof*

note) do hby, as to such pts of the ppty hinafter mentd as are of freehd tenure, grant, and as to such pts of the same ppty as are of leasehd tenure, demise, and as to all the residue of such ppty, assign to the sd A., his hrs, exs, ads, and assigns resply, ALL AND SINGULAR the iron mines and other mines and minerals, lands, hereds, works, buildings, erections, furnaces, foundries, machines, engines, railways, tramways, roads, trams, waggons, trucks, machinery, implemts, tools, plant, working stock, and other este and effects, whatsoever and wheresoever, whether real or psonal, which are now or may at any time during the continuance of this secy be held by or belonging to the Co, *omitting general words and estate clause, see Vol. I., pp. 357, 359, notes.*

To HOLD all the sd premes hinbefore granted, demised and assigned resply, UNTO AND TO THE USE of the sd A. his hrs, exs, ads, and assigns resply, according to the tenure or nature of the same respive premes, as to such pts of the sd premes as are of leasehd tenure, for the respive residues now unexpired of the several terms of years for which the same premes resply are held by the Co except the last day of each such term: And as to all the residue of the sd premes absolutely, SUBJT, as to such of the sd premes as are comprd in or subjt to the same, to a mtge dated, &c., made by the Co to X. and Y. in trust for securing the debentures therein mentd or referred to, amounting to the sum of £—— and the interest thereon, and subjt to the provo for redemption hinafter contd: PROVD ALWAYS, and it is hby agrd, that if the Co or their assigns shall, at the maturity thof resply, pay the several bills of exchange mentd in

PRMO.
XXXIII.
Convey-
ance.

Parcels.

Haben-
dum.
To mort-
gages.

Subject
to prior
charge.

Proviso for
redemp-
tion.

resply, &c., as in the proviso for redemption in the text," in the case of an ordinary mortgage to secure advances, this would run, "with the paymt to the sd A., his exs, ads, or assigns, of the sd principal monies and interest pursuant to the covenant of the Co hinbefore contd." The form of a charge might moreover be a means of avoiding the necessity for obtaining the lessor's licence in the case of leaseholds subject to a condition against assigning or underletting without licence.

PREC.
XXXIII.
—

the sd schedule hto, and every other bill of exchange which may hereafter be drawn on the Co by the sd A. and accepted by the Co, then the sd A., his hrs, exs, ads, or assigns respively, shall at any time thereafter, upon the request and at the cost of the Co or their assigns, reconvey, surrender, and reassign the sd respive mtged premes to the Co or their assigns, or as they shall direct, subjt to the sd prior mtge if subsisting; *Declaration of trust of nominal reversion of leaseholds for A.* p. 34; *Power to take possession as in last Precedent*, p. 161, "either before or after any of the sd bills of exchange shall have arrived at maturity;" AND THE Co do hby covenant, &c., to insure and repair, if required, p. 44, *mutatis mutandis*, or covenant supplemental to statutory provisions for insurance, p. 46; [*Power of sale (a)*, p. 22 or p. 29, *mutatis mutandis*, the power not to be exercised "until default shall have been made in paymt at maturity of some or one of the bills of exchange, the paymt whof is intd to be hby secured," and omitting the rest of that clause; in the clause as to application of the purchase-money say, "in or towards paymt of such of the sd bills of exchange as shall have arrived at maturity, and in the next place, in case any of the sd bills shall not have arrived at maturity, shall pay into the Bank of Messrs. —, at —, or some other bank to be selected by the sd A., his exs, ads, or assigns, the residue of the sd monies, or so much thof as shall be sufficient for the paymt of such last mentd bill or bills, and shall from time to time apply the same monies in or towards paymt of such bills, or any of them at maturity, and then pay the surplus, if any, of the sd monies to the Co or their assigns";] *Mortgagee's indemnity clause*, p. 61.

IN WITNESS, &c.

(a) As the statutory power of sale (as to which see p. 22, note), would in this case require some modification, it seems better to insert an express power.

XXXIV.

MORTGAGE DEBENTURE of a LIMITED COMPANY
*transferable by DEED, and forming part of a sum
 secured by a TRUST DEED. VARIATIONS where COU-
 PONS for the INTEREST are attached, and where there
 is NO TRUST DEED for securing the Debentures (a).*

PREC.
 XXXIV.
 —

No. —.

The — Co, Limited.
 Offices, —

Mtge debenture for £—, bearing interest at £—
 per cent. per annum, and repayable on the — day of
 —, 18—.

[THIS DEBENTURE is one of a series of debentures consti-
 tuting an aggregate sum of £—, secured by and issued or
 issuable subj to the provons of a mtge, dated the — day
 of —, of the ppty of the Co to A. and B. as trees for the
 holders of the debentures.]

THE — Co (Limited) in conson of the sum of £—
 paid to them by — of — hby covenant with the sd
 —, to pay to him, his exs, ads, and assigns, at the
 registered office of the co for the time being, on the —
 day of —, the principal sum of £— upon the surrender
 of this debenture, and to pay to him or them interest on the
 sd principal sum from the — day of — at the rate of
 — per cent. per annum half yearly on the — day of
 — and the — day of — in every year until and in-
 cluding the day of paymt of the sd principal sum [upon
 presentation of the coupons for such interest hto annexed at

Covenant
 to pay.

(a) For a form of debenture payable to bearer, and operating as a floating security so as not to hinder sales, &c., of the company's property, see 2 Dav Prec. part 2, p. 671, and for a form of trust deed for securing debentures see *id.*, p. 687; and as to debentures of companies, see *id.*, p. 672, note (c).

As to the priority inter se of different classes of debentures, see *Gartside v. Silkstone, &c., Co.*, 21 Ch. D. 762.

PREG.
XXXIV.
—

Declaration that sum is part of a larger sum.
Charge.

the bankers of the Co] the first of such paymts of interest to be made on the — day of — : [If there is no trust deed to secure the debentures add, AND THE Co hby declare that the sd principal sum is pt of a sum not exceeding in the whole £—— issued or issuable in like bonds : AND THE Co do hby charge all the lands, mines, buildings, machinery, works, plant, effects, undertaking, and ppty of the Co, both real and personal and present and future, with the payment of the sd principal sum and interest hby covenanted to be paid, to the intent that this secy, and the other secs forming pt of the above-mentd sum of £——, may rank equally and rateably as a first charge upon the sd ppty and undertaking] :
PROVD ALWAYS, that this secy shall be transferable only by deed registered at the office of the Co ; And that the deed of transfer shall be prepared by the Co (b) ; And the Co shall not be bound to register any address out of the United Kingdom : And that all letters and notices sent by post to the registered address of the holder of this secy shall be deemed to be sufficiently delivered and given.

Proviso as to transfer of debenture.

Given under the Common Seal of the sd Co this — day of —.

The Common Seal of the
Co was affixed in the
presence of

_____) Directors.
_____, Secretary.

Registered folio —.

(b) The following is a form of Transfer of a debenture of a Limited Company :

Form of transfer of debenture.

" I, A., of, &c. [if by indorsement, ' the within-named A.' or if there is a previous endorsed transfer, ' the above-named A.'], in conson of the sum of £—— paid to me by B. of, &c., do hby transfer to the sd B., his exs, ads, and assigns, the within-written debenture [if by independent deed, ' a certain debenture,' insert short description], and all principal

Form of Coupon annexed.

PREC.
XXXIV.
—

The — Co, Limited.

Interest Warrant.

Mtge debenture £—, No. —, £—, payable
— 18— (subjt to Income Tax, if any) on presenta-
tion at Messrs. —, Bankers.
£— .

—, Secretary.

XXXV.

MORTGAGE by a small TRADER of a LEASEHOLD
house, with the GOODWILL and TAKINGS of his BUSI-
NESS, to the Trustees of a LOAN Society, the money
to be repaid by WEEKLY INSTALMENTS. VARIA-
TIONS where the CASHIER of the mortgagor is ap-
pointed RECEIVER.

PREC.
XXXV.
—

PARTIES, A., mortgagor, 1; B. and C., trustees of the
society, 2; [D., receiver, 3;] intended to be read as annexed
to an indre, &c., the lease, see p. 80, note (b), WITNETH that Wit-
in conson of the sum of £— this day advanced to the sd nessmeth.
A. by the sd B. and C. out of monies belonging to them on
a joint account (the rect whof the sd A. doth hby acknow-
ledge) the sd A. hby covenants with the sd B. and C. to pay Covenant
to them the sum of £—, the principal and interest, within for pay-
a term of — weeks by equal weekly instalmts, the first of ment by
such instalmts to be paid on the — day of —, and the weekly in-
last of such instalmts to be paid on the — day of —; stalments.
AND THIS INDRE ALSO WITNETH, &c., demise of Further
leaseholds subject to redemption as in Precedent V.; AND witnesseth.
THIS INDRE ALSO WITNETH, that for the conson
afsd the sd A. as beneficial owner (see p. 74, note) hby assigns Assign-

monies and interest thby secured, and the full benefit thof.
IN WITNESS whof, I have hereunto set my hand and seal, this
— day of —."

PRMO.
XXXV.
—
ment of
goodwill
and takings
of business.

Covenant
to keep
accounts,
&c.

Proviso
that whole
mortgage
money shall
become due
in certain
events.

unto the sd B. and C., ALL THE goodwill and connection of the sd business of —, now carried on by the sd A. in the sd messuage and premes hinbefore demised, AND ALSO all monies to be received by or become owing to him the sd A. in respect of his sd business (a); *Habendum*, p. 16, form III.; *Proviso for redemption*, p. 18, form II.; *Trust of nominal reversion of leaseholds and power of attorney*, p. 84; *Covenant to insure against fire*, p. 44, extending to stock in trade, the monies receivable for loss of stock in trade to be applied, "in or towards the paymt in advance of the sd weekly instalmts;" AND THE SD A. hby covenants with the sd B. and C. that so long as any monies shall remain due on this secy he the sd A., his exs or ads, will keep proper books of account of the sd business, and make full entries therein of all the dealings and transactions of the sd business, and will keep such books and all letters, papers, and documts belonging or relating to the sd business in the sd messuage and premes, and will at any time when required produce the same for the inspection of the sd B. and C., their exs, ads, and assigns, and allow them free access thto, and to make copies and extracts of and from the same; PROVD ALWAYS and it is hby agrd that if the sd A. shall die, or shall break or fail to observe any of the covenants or agreemts on his pt herein contd, or shall give or execute a bill of sale over any of his personal chattels or effects, or a warrant of attorney to enter up judgmt against himself, or shall give any promissory note or accept or endorse any bill of exchange except in the ordinary course of business, or suffer any of his goods to be taken in execution or under a distress for rent, rates, or taxes, or shall, except on account of illness, be absent from his sd business at any time for more than one week, or shall cease to carry on his sd business in the sd messuage and premes hby mtgd, or if the takings of his sd business in any one week shall be less than £—, then and in

(a) It seems that this assignment of the future takings of the business would not be effectual in case of bankruptcy; *Ex parte Nicholls*, W. N. 1883, 16.

any of such cases the whole of the sd sum of £—— (*the total sum*) or the unpaid pt thof shall become immediately payable and recoverable; *Clause modifying statutory power of sale*, p. 31 (b); [AND THE sd A., with the concurrence of the sd B. and C., doth hby irrevocably appoint the sd D. to be the receiver, agent, and attorney of him the sd A. from time to time in the name of the sd A. to receive all monies becoming due to the sd A. in respect of his sd business from the persons liable to pay the same, and to use all lawful means and do all things necessary or proper for recovering and obtaining paymt of the same as fully and effectually as the sd A. could do, and doth hby declare that the rect of the sd receiver shall be an effectual discharge to all psons making such paymts; AND IT IS hby agrd that the sd receiver shall out of the monies received by him in each week pay the instalmt of the monies hby secured which is payable at the end of that week, and all other monies owing under this secy, and any rent, rates, taxes, premiums of insurance, expenses of repairs, or other paymts which may be payable for maintaining this secy, and shall pay the surplus (if any) to the sd A.; *Covenant by receiver and provisions for removal of receiver, and appointment of new receiver, and protection of mortgagees from liability for his default*, as in pp. 57, 58]; *Mortgagee's indemnity clause*, p. 61. [*Clauses as to joint account, and devolution of mortgagee's powers if required*, pp. 39, 63.]

PREC.
XXXV.
—Appoint-
ment of
receiver.Trusts of
monies
received.

IN WITNESS, &c.

(b) Although "goodwill" may not be property within the Conv. Act, 1881, the sale of the house under the statutory power would necessarily carry such part of the goodwill as attaches to the house; see *Chisum v. Deves*, 5 Russ. 29; *Pile v. Pile*, 3 Ch. D. 36. If material, a covenant may be inserted by A. "that he will not within — years after foreclosure or sale by the said B. and C., their exs, ads, or assigns of the leasehd premes hby mortgaged, either alone or jointly, &c.," *covenant not to carry on trade*, Vol. I. p. 540. As to the right of the vendor after the sale to solicit his former customers, see *Labouchere v. Dawson*, L. R. 13 Eq. 355; *Walker v. Mottram*, 19 Ch. D. 355.

XXXVI.

PREG.
XXXVI.
—

MORTGAGE of RENEWED LEASE by reference to and annexed to a PRIOR MORTGAGE of the SURRENDERED LEASE (a).

Parties.

THIS INDRE made, &c., BETWEEN A., of, &c. (hinafter called the mtgor), of the one pt, and B., of, &c., and C., of, &c. (hinafter called the mtgees), of the other pt, intended to be read as annexed to an indre, dated, &c., and expd, &c., being a mtge by the sd A. to the sd B. of the premes comprd

Recitals.

Surrender.

in an indre of lease, dated, &c., and expd, &c. WHAS by an indre bearing even date with and executed before these presents, endorsed on the hinbefore-mentd indre of lease of the — day of —, and expd to be made between, &c., the sd lease has been surrendered to the sd X., in whom the reversion of the premes comprd in the sd lease is now

New lease.

vested: AND WHAS by another indre also bearing even date with and executed before these presents, and made between the sd X. of the one pt and the mtgor of the other pt, the messuage or tenemt and premes comprd in the sd surrendered lease have been demised by the sd X. to the mtgor, his exs, ads, and assigns, for the term of — years from the — day of —, at the yearly rent of £—, and subj to the covenants on the pt of the lessee and condons therein contd: AND WHAS the mtgees concurred in the surrender of the sd lease of the — day of — at the request of the mtgor, upon an agreemt that the renewed lease to be granted as afsd should be assigned to the mtgees by way of secy for the principal monies owing to them under the sd indre of mtge of the — day of — and the interest thof, in substitution for the sd surrendered lease in mner hinafter appearing: AND WHAS the principal sum of £— is now owing to the mtgees on the secy of the

Agree-
ment.

State of
mortgage
debt.

(a) As to the stamp on a substituted security, see the Stamp Act, 1870, Sched. MORTGAGE.

sd indre of mtge with interest thereon from the — day of — last: NOW THIS INDRE WITNETH that in conson of the mtgees having made such surrender at the request of the mtgor as afsd, and of the premes, the mtgor as beneficial owner (*see p. 74 note*), doth hby assign unto the mtgees, their exs, ads, and assigns, ALL AND SINGULAR the sd messuage or tenemt and premes comprd in or expd to be demised by the hinbefore recited indre of lease, bearing even date with these presents, *omitting the general words and estate clause, see Vol. I., pp. 357, 359, notes*; To HOLD the same premes UNTO the mtgees, their exs, ads, and assigns, for the sd term of — years expd to be granted by the hinbefore recited indre of lease of even date herewith, subjt to the like equity of redemption on paymt of the principal monies and interest owing on the secy of the sd indre of mtge, and with the like power of sale and other powers and provons for securing and obtaining paymt of the sd principal monies and interest, and with the benefit of the like covenants on the pt of the mtgor and subjt to the like provons in all respects as are contd or implied in or conferred by the sd indre of mtge concerning the premes comprd in the sd surrendered lease, and by the sd indre of mtge assigned to the mtgees, their exs, ads, and assigns, to the intent that the sd renewed lease of the sd premes may become in all respects substituted for the sd surrendered lease thof as a secy for the paymt of the sd sum of £—— and interest.

IN WITNESS, &c.

XXXVII.

MORTGAGE of BONDS and SHARES of COMPANIES incorporated under SPECIAL ACTS and LIMITED COMPANIES, *some of the shares being fully and others partially* PAID UP, SHARES in a COST-BOOK MINING

PREC.
XXXVI.

Wit-
nesseth.

Assign-
ment.
Parcels.

Habendum
to mort-
gages as
substituted
security.

PREC.
XXXVII.

PREC.
XXXVII.
—

COMPANY or other Company in which the SHARES are TRANSFERABLE without DEED, and SCRIP of a foreign GOVERNMENT loan and of an English COMPANY, for securing past and future TRADE DEBTS.

Recital of
debt and
deposit of
shares, &c.

PARTIES, A., mortgagor, 1; B., mortgagee, 2: WHAS the sd A. is indebted to the sd B. in several sums of money, amounting to upwards of £—— for goods sold, monies advanced, and otherwise, and in order to induce the sd B. to continue his dealings with the said A. and for the ppose of securing the paymt of all such sums of money as are or shall at any time hereafter be due and owing from the sd A., his exs, or ads, to the sd B., his exs, ads, or assigns, with interest for the same as hinafter mentd, the sd A. has transferred the bonds and shares mentd in the 1st schedule hto (a), to the sd B., and has deposited with the sd B. the certificates, togr with transfers from him, the sd A., to the sd B., of the shares mentd in the 2nd schedule hto, but such transfers have not been executed by the sd B. or registered, and the sd A. has executed and deposited with the sd B., transfers in blank of the shares mentd in the 3rd schedule hto, and has deposited with the sd B. the scrip certificates mentd in the 4th and 5th schedules hto, and has

(a) The shares in the first schedule are fully paid up; those in the second schedule are liable to calls, and both those in the first and second schedules are transferable by deed with or without registration; those in the third schedule are transferable without any formal document, and as to them there is no legal objection to the execution of transfers in blank (see Lindley on Partnership, 3rd ed., p. 725; *Walker v. Bartlett*, 18 C. B. 845; *Re Tahiti Cotton Co.*, L. R. 17 Eq. 273). The scrip in the fourth schedule is scrip of a foreign loan, and is a negotiable instrument liable to forfeiture on non-payment of the remaining instalments, and when fully paid up is exchangeable for a bond of the Government (see *Goodwin v. Roberts*, 1 App. Cas. 476); the scrip mentioned in the fifth schedule is scrip of a company in which the scrip-holder does not acquire the rights of a shareholder until his scrip has been exchanged for share certificates and his name has been inserted in the company's register of shareholders. See Lindley on Partnership, 128. As to the form of a mortgage of shares and bonds, see 2 Dav. Prec., part 2, p. 655, note; Elph. Introd. Conv., 214.

agrd to execute these presents: NOW THIS INDRE
WITNETH that in conson of the sd A. being indebted to
the sd B. as afsd, and of the sd recited agreemt and the
premes, *covenant by A. to pay on demand*, p. 14, to the sd
B., his exs, ads, or assigns, ALL AND EVERY the sum and
sums of money which are now or shall hereafter be due and
owing from the said A. to the said B., his exs, ads, or
assigns, in respect of goods sold, advances made, or on any
other account whatsoever, TOGR WITH interest for the same
resply, after the rate of — per cent. per annum, from the
time or respive times of the same having become due:
PROVD ALWAYS, that if the sd A., his hrs, exs, ads, or
assigns, shall pay to the sd B., his exs, ads, or assigns,
all such sums and sum of money as afsd with interest,
psuant to the covenant of the sd A. hinbefore contd,
then the sd B., his exs, ads, or assigns, shall at any
time thereafter, upon the request and at the cost of the
sd A., his exs, ads, or assigns, retransfer and deliver up to
him or them, or as he or they shall direct, all the sd bonds,
shares, certificates, scrip, transfers and premes hinbefore
mentd to have been resply transferred to and deposited with
the sd B., or in case any of the sd scrip certificates shall
have been exchanged for bonds or shares, then such bonds
or shares, all which premes are hinafter collectively called
the sd mtged premes: AND IT IS HBY agrd that until the
transfers of the sd shares specified in the sd 2nd and 3rd
schedules shall have been resply completed and perfected by
registration, so far as the same may be necessary, the sd
A., his exs and ads, shall stand possessed thof in trust for
the sd B., his exs, ads, and assigns, subjt to such equity of
redemption, if any, as shall for the time being be subsisting
therein by virtue of the provo for redemption hinbefore
contd; *Covenant by A.*, THAT he, his exs or ads, will,
during the continuance of this secy, duly and punctually
pay all calls and instalmts that may be made or become due
in respect of any of the sd mtged premes: AND THAT in
default of his or their so doing, the sd B., his exs, ads, or

PREC.
XXXVII.

Wit-
nesseth.

Covenant
to pay
present
and future
debts,

with in-
terest.

Proviso for
redemp-
tion.

Mortgagor
to hold
shares in
trust for
mortgagee
till register
of trans-
fers.

Covenant
by mort-
gagor to
pay calls.

Power for
mortgagee
to pay
calls.

PREC.
XXXVII.

Power to
mortgagee
to receive
dividends.

To ex-
change
scrip
certificates.
Power of
sale (b).

Proviso for
protection
of pur-
chasers.

assigns, may make such paymts, and that all sums paid by him or them for that ppose with interest for the same after the rate afsd, shall be repaid by the sd A., his hrs, exs, or ads, on demand, and shall in the meantime be a charge on all the sd mtged premes : PROVD ALWAYS, that it shall be lawful for the sd B., his exs, ads, or assigns, as well before as after the sd transfers of the sd shares specified in the sd 2nd and 3rd schedules shall have been completed and perfected as afsd, to receive all dividends and bonuses becoming due thereon : AND ALSO to exchange the scrip certificates mentd in the sd 4th and 5th schedules for the bonds or shares for which the same may resply be exchangeable : AND ALSO at any time or times hereafter, *continue power of sale, p. 28, adding at the end of the clause giving the authority to sell, the words "expressly including the completion and registration of the sd transfers of the sd shares mentd in the sd 2nd and 3rd schedules or any of them, or the filling in of the name or names of any pson or psons as transferee or transferees in the sd transfers of the sd shares mentd in the sd 3rd schedule or any of them, and the delivery of the sd scrip certificates or any of them to any pson or psons," omitting the clauses as to events in which power is to be exercised, the proviso for protection of purchasers, and the trusts of the purchase-money :* PROVD ALWAYS, that no co, pchaser, or other pson paying any monies, whether on sale or otherwise, to, or having any dealings with the sd B., his exs, ads, or assigns, in respect of any of the sd mtged premes, shall be bound to inquire whether any monies remain due on this secy, or otherwise as to his or their right to receive such monies or the regularity of any such sale, or other dealing, or be affected by any irregularity therein ; *Trusts of monies to be received, p. 41, "in respect of any of the sd mtged*

(b) Assuming this to be a "mortgage" within the Conv. Act, 1881, the statutory power of sale and receipt clause and trusts of monies received (ss. 19, 22, see pp. 22, 41, notes) might to some extent be relied on ; but as the provisions are in this case somewhat special, express clauses are inserted.

premes, whether upon a sale or otherwise ;" *Covenant by A. for further assurance*, p. 71, omitting the words "foreclosure or," and saying, "for effectually vesting the sd mtged premes or any of them in the sd B., his exs, ads, or assigns, or any pchaser or pchasers from him or them, and for enabling the sd B., his exs, ads, or assigns, at any time or times hereafter, while any money shall remain on the secy of these presents, to receive any sums of money becoming due or receivable either for principal or for interest, dividends, or bonuses, in respect of any of the sd mtged premes : AND FURTHER, that he the sd A., his exs, ads, or assigns, will, if required by the sd B., his exs or ads, permit all or any of the shares specified in the sd 2nd and 3rd schedules, to be revested in him or them, the sd A., his exs, ads, or assigns, in such mner as the sd B., his exs, ads, or assigns shall think fit : AND WILL indemnify the sd B., his exs, and ads, against all costs and liabilities which may be incurred or sustained in respect of any of the sd mtged premes ; *Mortgagee's indemnity clause*, p. 61 : AND LASTLY, in conson of the premes the sd A. doth hby irrevocably (c) appoint the sd B., his exs, ads, and assigns, to be the attorney and attornies of the sd A. in his name or otherwise to receive and give receipts for all or any monies becoming due or receivable in respect of any of the sd mtged premes, and to execute and do all such transfers and things as are hby covenanted to be executed and done by the sd A. (d).

PREC.
XXXVII.

Covenant
by mort-
gagor for
further
assurance.

To permit
shares to
be revested
in him.

For in-
demnity.

Power of
attorney.

IN WITNESS, &C.

Five Schedules.

(c) See the Conv. Act, 1882, s. 8.

(d) Notice of this deed should be given to the Companies whose shares are included in the second and third schedules, in order that the security may be effectual as against any subsequent transferees or incumbrancers, or (when the mortgagor is a trader), against his trustee in bankruptcy, *Ex parte Stewart*, 4 D. J. and S. 543 ; *Lindley on Partnership*, 3rd ed., p. 1184 ; *Ex parte Union Bank of Manchester*, L. R. 12 Eq. 354.

XXXVIII.

PREC.
XXXVIII.

MORTGAGE of FREIGHT and EARNINGS of, and
POLICIES of Insurance on, a SHIP, to accompany
a STATUTORY MORTGAGE (a).

PARTIES, A., (hinafter called the mtgor, which expression shall be taken to include his exs, ads, and assigns, where the context so requires or admits), 1; B. (hinafter called the mtgee, which expression shall be taken, &c., *as above*), 2: WHAS the mtgor is the registered owner of the British ship — of the port of —; AND WHAS the sd ship is about to proceed on a voyage to — and back to the United Kingdom [under a charter party, dated, &c., and made, &c.]; AND WHAS the mtgor has, by a policy of insurance, dated the — day of —, and effected with Messrs. K. and Co., insured the sd ship and freight in the sum of £—; *Agreement for loan*, p. 1, "upon having the repaymt thof, with interest, at the rate of — per cent. per annum, secured by a statutory mtge, and upon having the repaymt of the sd principal monies and interest further secured, and the repaymt of all the other monies, charges, and interest hinafter mentd, secured in mner hinafter appearing:" AND WHAS, by a statutory mtge, bearing even date with these presents, under the hand and seal of the mtgor, and intd to be registered at — afsd, the mtgor in conson of the sum of £— this day lent to him by the

Recitals: title of mortgagor.
Intended voyage.
Insurance.
Agreement for loan.
Statutory mortgage.

The Merchant Shipping Acts.

(a) See the Merchant Shipping Act, 1854, 17 & 18 Vic. c. 104, ss. 66–75; and the Amendment Act of 1855, 18 & 19 Vic. c. 91, s. 11; and 1862, 25 & 26 Vic. c. 63, s. 3; and as to the rights and liabilities of mortgagees of ships, see *Hutchinson v. Wright*, 25 Beav. 444; *European, &c., Company v. Royal Mail, &c., Company*, 4 K. & J. 676; *Wilson v. Wilson*, L. R. 14 Eq. 32; *Liverpool, &c., Company v. Wilson*, L. R. 7 Ch. 507; *Bell v. Blyth*, L. R. 4 Ch. 136; 2 Dav. Prec., part 2, p. 233; see also the Digest to the Law Reports, tit., SHIP-MORTGAGE. As to the effect of omitting to register a mortgage, see *Keith v. Burrows*, 1 C. P. D. 722, 2 App. Ca., 636; as to mortgages of unfinished ships, see *Ex parte Hodgkin*, L. R. 20 Eq. 746.

mtgee, has covenanted with the mtgee, *recite covenant for payment of £—— and interest*, and for better securing the repaymt in mner afsd of the sd principal sum and interest, the mtgor has thby mtged the sd ship to the mtgee [and in the sd mtge is contd a provo that the statutory power of sale shall not be exercised until the sd —— day of ——]:

NOW THIS INDRE WITNETH, that in further psuance of the sd agreemt, and in conson of the premes, the mtgor as beneficial owner (*see p. 74, note*), doth hby assign unto the mtgee ALL THE freight, passage-monies, and earnings of the sd ship, or any shares or share thof, on the now intd, or any future voyage: AND ALSO [the sd charter pty, and] all future charter pties, contracts, and agreemts in relation to the sd ship, or the freight, passage-monies, or earnings thof: AND ALSO the sd policy of insurance, and all and every present or future policy or policies of insurance on the sd ship, or her appointmts, or any shares or share therein, or on the freight, passage-monies, or earnings thof, or any pt or pts thof, and all monies insured by or to become payable under the sd policies, or any of them, and the full benefit and advantage thof, *omitting the estate clause, see Vol I., p. 359, note*; To HOLD the same premes UNTO the mtgee, subjt to the provo for redemption hinafter contd: PROVD ALWAYS, and it is hby agrd, that if the mtgor shall on the —— day of —— next pay to the mtgee the sd principal sum of £—— and interest intended to be secured by the sd statutory mtge, and shall also on demand pay to the mtgee all the expenses, premiums, commissions, charges, monies, and interest hinafter covenanted to be paid by the mtgor to the mtgee, then and in such case the mtgee shall at any time thereafter, upon the request and at the cost of the mtgor, reassign the sd premes hinbefore assigned to the mtgor, or as he may direct: AND THE mtgor doth hby covenant with the mtgee that in the event of the sd ship being lost or sustaining or being liable to contribute to or pay for any loss, the mtgee may collect the amount insured in respect of the sd ship or her freight or earnings,

PREC.
XXXVIII.
—

Wit-
nesseth.

Assign-
ment of
freight.

Charter
party.

Policy.

Haben-
dum.

To mort-
gagee.

Proviso for
redemp-
tion.

Covenant
by mort-
gagor that
mortgagee
may collect
the in-
surance-
money.

PREC.
XXXVIII.

Not to
vitiate
policy.

To effect
new policy
if present
policy
vitiates.

To insure.

New policy
to be sub-
ject to
security.

To pay
premiums.

Moneys
paid to be
a charge.

That mort-
gagor will
pay mort-
gagee's
business
charges.

or paid by the underwriters, for the benefit of whom it may concern: AND FURTHER, that neither the mtgor nor any pson to whom the sd ship [is or] may be chartered nor their respive servants will do or suffer anything whby the present or any future policy of insurance on the sd ship or the freight, passage monies, or earnings thof may be vitiated or become void, or the mtgee may be prevented from receiving or recovering the money thby intd to be assured, or any pt thof: AND THAT if the sd policy or policies shall be or become vitiated or void the mtgor will immediately, at his own costs and charges, do all such things as may be necessary for effecting a new policy or new policies, and keeping the same on foot and vesting the same in and in the possion of the mtgee in lieu of and in substitution for such policy or policies as may have become vitiated or void as afsd: AND FURTHER, that the mtgor will at all times, during the continuance of this secy, keep the sd ship and the freight, pas- sage-monies, and earnings thof insured with Messrs. K. & Co., or some other underwriters or insurance office or offices to be approved of by the mtgee, in the sum of £—— at the least [with the usual collision clause, and including war risks]: AND THAT every policy so effected, &c., *to be subject to security*, p. 42, for "original policy," say, "policy hby mtged:" AND THAT the mtgor will during the continuance of this secy pay all such premiums and monies as may be payable in order to keep the sd ship, freight, passage-monies, and earnings so insured; *Power to mortgagee to pay premiums*, p. 43: AND THAT all monies, charges, and ex- penses, which shall be paid or incurred by the mtgee in respect of the sd ship, freight, or insurances on ship, freight, passage-monies, or earnings, or otherwise in the execution of the trusts or powers of these presents, *with interest to be repaid by mortgagor on demand, and in the meantime to be a charge*, p. 43, on, "the sd ship, and all the sd hby mtged premes:" AND FURTHER, that the mtgor will, during the continuance of this secy, pay or allow to the mtgee, in addition to all discounts received by him on insurance or

disbursements, all usual and customary commissions and charges for business which may be performed by the mtgee or any firm in which he may be a member on account of the mtgor in relation to the sd ship or any shares or share therein in the same mner as if he had not been a mtgee of the sd ship: AND THAT the mtgor will from time to time in writing apprise the mtgee of all or any information or intelligence which he may receive concerning the sd ship immediately on the rect thof: AND in conson of the premes the mtgor doth hby irrevocably (a) appoint the mtgee to be his attorney in his name and on his behalf to demand, sue for, enforce paymt of, and receive and give effectual rects and discharges for the freight, passage-monies, and earnings hby mtged, *to prosecute and defend legal proceedings, Vol. I., p. 180, saying, "or any other matters relating to or affecting the sd ship," to arrange and compromise, Vol. I., p. 180, substitute for, "or any other matters, &c.," "or any claims or matters now subsisting or hereafter arising in relation to the sd ship,"* AND to appoint and discharge the master, officers, and crew of the sd ship, and generally to act in and about the premes as fully and effectually to all intents and pposes as if the mtgee had been the absolute owner of all the sd mtged premes, *to appoint substitutes, Vol. I., p. 181, ratification, Vol. I., p. 182: PROVD ALWAYS, and it is hby agrd, that it shall be lawful for the mtgee or any pson or psons authorised by him, at any time after the — day of —, without any further consent of the mtgor, to enter upon and take possion of the sd ship whether at sea or in port, and whether abroad or at home, and to navigate the sd ship, and also to detain her at any port where she may be, and also to remove her from any port to any other port for sale: [(b) AND ALSO to sell all or any of the sd premes hby*

PRMO.
XXXVIII.
—
To give in-
formation.
Power of
attorney.
Power to
mortgagee
to take
possession.
To sell.

(a) See the Conv. Act, 1882, s. 8.

(b) The clauses here bracketed might perhaps be omitted, as they are for the most part, though not entirely, provided for by the Conv. Act, 1881, ss. 19 — 22, see pp. 22, 41, notes.

PREC.
XXXVIII.

Mortgagee's indemnity clause.

mtged, either togr or separately, and either togr with the sd ship or any share or shares thof, *continue*, p. 28 *form III.*; *in the clause as to events in which power is to be exercised, say*, "neither the power of sale herein contd nor the statutory power of sale of the sd ship shall be, &c.;" *in the clause as to application of purchase-monies, say*, "out of the pchase-monies on any sale, whether under the power herein contd or the sd statutory power, and out of the monies (if any) received by him in respect of the sd freight, passage-monies, earnings, policies, and premes hby mtged;" *Receipt clause*, p. 40, *as to*, "any monies paid to the mtgee in respect of any of the sd mtged premes:"] **PROVD ALWAYS** that the mtgee shall not be answerable for any involuntary losses which may happen in or about the exercise or execution of the powers of sale or any other powers or trusts arising under the Merchant Shipping Acts or these presents.

IN WITNESS, &c.

XXXIX.

PREC.
XXXIX.

AGREEMENT to accompany STATUTORY MORTGAGE of a SHIP. VARIATIONS where MORTGAGOR and MORTGAGEE are FIRMS. Short form.

Parties.

Recitals.
Statutory mortgage.

AGREEMENT made the — day of —, BETWEEN A. (hinafter called the mtgor (a) of the one pt, and B. (hinafter called the mtgee (a)) of the other pt: **WHAS** by a mtge in the statutory form bearing even date herewith 64 64ths of the — of — have been transferred by the mtgor to the

(a) Where the parties are firms, say "mtgors" and "mtgees," and make consequential alterations throughout, insert clause ix., and omit clause x.

mtgee by way of mtge to secure the general balance of the account current of the mtgor with the mtgee : AND WHAS, for further securing the paymt of the sd general balance of account current, the pties have agrd to enter into this agreemt : NOW IT IS HBY AGRD AS FOLLOWS :—

PREC.
XXXIX.

Agree-
ment.

I. THE MTGEE may at any time at his discretion (if he shall deem it necessary so to do for better secy, and although no monies may be immediately due or payable to him by the mtgor) enter into and retain the possion of the sd ship, and employ the same in any trade or for any voydge or voyages either as a general ship or on hire or charter, and demand and receive the freight and earnings thof, and his rect shall be a good and valid discharge for the same.

Power to
mortgagee
to take
possession.

II. So LONG as any money shall remain due to the mtgee the sd ship shall not proceed on any voyage or voyages without his consent in writing first obtained, and (if he think fit to exercise this power) he shall have the nomination of the master of the sd ship, and the mtgor undertakes from time to time to remove any master of whom the mtgee shall not approve, and to appoint any master nominated by the mtgee.

As to
voyages
and nomi-
nation of
master.

III. THE MTGEE undertakes not to require paymt of the balance of his account current, or exercise the power which is given by the Merchant Shipping Acts, to sell the sd ship, until after the — day of —, except in case of the bankruptcy, or suspension of paymt of or by the mtgor, or his compounding or arranging with his creditors, or of the breach by him of any of the clauses herein contd, and for the pposes of this clause the dishonour of any bill of exchange accepted by the mtgor shall be deemed to be a suspension of paymt by him.

Money not
to be called
in before a
day named

IV. IN CASE any of the events mentd in the last preceding clause shall happen, and the mtgee shall think fit to require paymt of the balance of his account current, a demand of paymt shall be deemed to be sufficiently made, if in writing addressed to the mtgor, and served on him personally, or left for him at his last-known place of business in —.

As to
demand of
payment.

V. THE MTGEE shall have power to buy in at any auction, Mortgagee

PREC.
XXXIX.

may buy in
at sale.
Mortgagor
to insure.

and to rescind any contract for sale without being responsible for any loss.

VI. THE MTGOR will at all times during the continuance of this secy insure and keep insured the sd ship and her freight [with the usual collision clause, and including war risks] in the sum of £—— at the least, and with such insurance offices or underwriters as the mtgee shall require, and will from time to time deliver the original stamped policies duly endorsed to the mtgee; and in case of default either in insuring or keeping insured, or in delivering the stamped policies duly endorsed as afsd, it shall be lawful for (but not obligatory on) the mtgee to insure and keep insured the sd ship and her freight, or either ship or freight, in such amounts as he shall think proper, and in case of the loss of, or damage to, the sd ship, the mtgee shall have power to recover and receive all insurance monies, and give good and valid discharges for the same, and to compromise claims or to refer the same to arbitration as he in his discretion shall think proper.

As to mat-
ters to be
included in
account
current.

VII. ALL BILLS of exchange, whether current or overdue, bearing the name of the mtgor and held by the mtgee, commission as agrd upon, and all charges and expenses which the mtgee may incur or pay by reason of the dishonour or renewal of any bill of exchange, and also all expenses incident to the insurance or the taking and keeping possession or the sale of the sd ship, togr with interest at the rate from time to time agrd upon on all amounts paid or advanced by the mtgee, shall form items in the account current between the pties, and be secured by the sd statutory mtge and these presents, and the sd ship shall not be redeemed or redeemable until full paymt or satisfon of the same.

Mortgagor
to execute
further
assurances.

VIII. THE MTGOR will, on request, execute and do any further assurance or act for more effectually assigning and making over the sd ship and her freight and earnings and all policies thon, to the mtgee, which may be reasonably required.

Proviso for

IX. [THE SECY made by the sd statutory mtge and these

presents shall not be affected by reason of any change in the person or persons constituting the firm of — or —, either by the death or retirement of any partner, or the accession of any new partner].

PREC.
XXXIX.
change in
firm.

x. [*Interpretation clause*, p. 68].

IN WITNESS, &c.

XL.

SUB-MORTGAGE of FREEHOLDS and LEASEHOLDS by way of COLLATERAL SECURITY (b). PREC. XL.

PARTIES, A., mortgagor, 1; B., mortgagee, 2: Recite the lease, setting out the parcels, and devolution of title (if any) to the original mortgagor, as in a conveyance on sale, see Vol. I., pp. 325, 326, the mortgage to the present mortgagor, p. 4, setting out the covenants for payment of principal and interest, the conveyance of the freeholds and leaseholds, and proviso for redemption, the declaration of trust (if any) of the nominal reversion, and noticing the power of sale (if any) and any proviso, such as a proviso for the reduction of interest on punctual payment, relating to the terms of repayment of the loan; State of mortgage debt, p. 6; The principal security for the present loan, bearing even date, and containing covenant for payment of principal and interest: AND WHAS upon the treaty for the sd loan of the sd sum of £—— secured by the sd recited indre of even date herewith, it was agrd that the paymt thof, togr with the interest thereon as afsd, should be further secured in mner hinafter appearing: NOW THIS INDRE WITNETH that in pursuance of the recited agreemt and in conson of the sum of £—— so advanced by the sd B. to the sd A. as afsd, the sd

Recitals.

Agree-
ment.

Wit-
nesseth.

(b) As to the stamp on a collateral security, see the Stamp Act, 1870, Sched. MORTGAGE; 2 Dav. Prec. pt. 2, p. 532, note.

PREC. XL. A., as beneficial owner (a), doth hby assign unto the sd B.,
Assign- his exs, ads, and assigns, ALL THAT the sd principal sum of
ment. £—— so owing as afsd to the sd A. upon secy of the hin-
Mortgage before recited indre of the —— day of ——, and all interest
debt. now due and henceforth to become due for the same, AND the
 benefit of the power of sale and all powers and provons [con-
 ferred by or] contd in the sd last mentd indre, AND all other
 secs for the same principal sum and interest, *omitting the estate*
clause, see Vol. I., p. 359, note, Power of attorney, p. 40 (c),
Haben- To HOLD the sd premes hinbefore assigned UNTO the sd B.,
dum. his exs, ads, and assigns, subjt to the provo for redemption
To mort- hinafter contd: AND THIS INDRE ALSO WITNETH,
gagee. that in psuance of the sd agreemt, and for the conson afsd,
Further the sd A., as beneficial owner (a), doth hby grant unto the sd
wit- B., his hrs and assigns, ALL AND SINGULAR the sd hereds
nesseth. and premes comprd in and granted by the hinbefore recited
Grant. indre of the —— day of ——, *omitting the estate clause,*
Freehold *see Vol. I., p. 359, note,* To HOLD the sd premes hby
parcels. granted UNTO AND TO THE USE of the sd B., his hrs and
Haben- assigns, subjt to such right or equity of redemption as the
dum. same premes are now subjt to by virtue of the hinbefore
To use of recited indre of the —— day of ——, and subjt to the provo
mortgagee. for redemption hinafter contd: AND THIS INDRE
Further ALSO WITNETH that in further psuance of the sd
witnesseth. agreemt and for the conson afsd, the sd A., as beneficial
 owner (a), doth hby assign unto the sd B., his exs, ads, and
 assigns, ALL AND SINGULAR the sd hereds and premes
 comprd in and demised by the hinbefore recited indre of the
 —— day of —— [with the benefit of the trust and provons
 contd in the sd indre of mtge of and concerning the sd
 nominal reversion thby reserved], *omitting the estate clause,*
see Vol. I., p. 359, note, To HOLD the sd premes lastly hby
 assigned UNTO the sd B., his exs, ads, and assigns, for the
 residue now to come and unexpired of the sd term of ——

(a) This implies the full costs for title, and further assurance as to the debt and the security; see p. 74, note.

(c) As to inserting a power of attorney, see 2 Dav. Prec. pt. 2, p. 726, note.

years granted by the sd recited indre of mtge, of, &c. [and for all the este and interest of the sd A. in the sd nominal reversion thby reserved] subjt to such right or equity of redemption as the same premes are now subjt to by virtue of the sd last mentd indre, and subjt to the provo for redemption hinafter contd; *Proviso for redemption, p. 18, form III., saying, "reassign and reconvey the sd mtge debt and interest and freehd and leasehd premes hereby assigned and granted resply, to the sd A., his hrs, exs, ads, and assigns, resply, subjt nevertheless as to the sd freehd and leasehd premes to such right or equity of redemption as shall be subsisting therein resply by virtue of the hinbefore recited indre of the — day of —; " PROV'D ALWAYS that the rect of the sd B., his exs, ads, or assigns, for the sd principal sum of £—, the original mortgage debt, and interest or any pt thof, or for the pchase-money of the premes sold on any exercise of the power of sale contd in the hinbefore recited indre of the — day of —, or any pt thof resply, shall effectually discharge the pson or psons paying such monies from the same, continue receipt clause, p. 40: Trusts of monies to be received under original mortgage, p. 41, saying, "shall receive any monies in or towards satisfson of the sd principal sum of £—, the original mortgage debt, or any interest thereon, whether on any sale under the power of sale contd in the hinbefore recited indre of the — of —, or otherwise, he or they shall by and out of the same," &c.; PROV'D ALWAYS, and it is hby agrd that it shall not be incumbent on the sd B., his exs, ads, or assigns, to enforce or realise the hinbefore recited secy, or to take any steps or proceedings for that ppose unless he or they shall think fit, and he or they shall not be answerable or responsible for any loss occasioned by any delay or omission in any such respect; [Power of sale, p. 28, of "the sd mtge*

PREO. XL.
—
Proviso for redemption.
Mort-gagee's receipt clause (b).
Trusts of monies to be received (b).
Proviso that mort-gagee need not realise.
Power of sale (c).

(b) These two clauses might probably be omitted in reliance on the statute, see p. 41, note; but it seems better to insert them.

(c) The power of sale might be omitted, as the statutory power would apply; see the Conv. Act, 1881, s. 19, p. 22, note.

PREC. XL. debt hby assigned, or so much thof as shall remain owing, with all interest then owing or to become owing thereon, togr with the secs for the same, or so far as the same are separable, any of the same premes or any pt or pts thof ; "] *Mortgagee's indemnity clause*, p. 61.

IN WITNESS, &c. (d).

XLI.

PREC. XLI.

MEMORANDUM (a) to accompany the DEPOSIT of
DEEDS by way of EQUITABLE MORTGAGE not con-
taining an AGREEMENT to EXECUTE a MORTGAGE (b).

MEMORANDUM that on the — day of —, the title deeds relating to a farm at —, in the county of —, a list whof is contd in the schedule hto, were delivered by me, A., *mortgagor*, of, &c., to B., *mortgagee*, of, &c., in pledge to secure to the sd B., his exs, ads, and assigns, the repaymt of £—, this day advanced by the sd B. to me the sd A., with interest thereon at the rate of — per cent. per annum.

Schedule.

(d) Notice should be given to the original mortgagor.

(a) This and the next five Precedents are forms of equitable charge or memorandum accompanying a deposit of deeds or other documents of title. As to the protection afforded by the legal estate, see 2 Dav. Prec. pt. 2, p. 209 ; and as to the importance of getting the deeds, see *id*, 238.

(b) It has been held that an instrument in this form requires no stamp ; *Meek v. Bayliss*, 31 L. J., N. S., Ch. 448, decided under the repealed Stamp Acts, but equally applicable to the Stamp Act, 1870. No power of sale is given to the mortgagee by virtue of the Conv. Act, 1881, s. 19, as the memorandum is not a deed, see p. 24, note ; and even if under seal, it would not, it is conceived, be a mortgage within that section (see the definition of "mortgage" in s. 2), any more than under the Stamp Act.

Stamp on
memoran-
dum.

XLII.

MEMORANDUM *under Seal to accompany* DEPOSIT of PREC. XLII.
 DEEDS *with* AGREEMENT to EXECUTE a formal
 MORTGAGE (a).

KNOW ALL MEN, that I, A., *mortgagor*, of, &c., do
 hereby declare that the title deeds and writings relating to the
 messuages, farms, lands, and hereds situate in the parish of
 — and county of —, known as the — este, a short
 description of which is contd in the first schedule hto, and a
 list of which deeds and writings is contd in the second
 schedule hto, have been deposited by me with B., *mortgagee*,
 of, &c., to secure to the sd B., his exs, ads, and assigns, the
 repaymt of the sum of £—— this day advanced by him to
 me with interest thereon payable half-yearly at the rate of
 — per cent. per annum until repaymt: And I do hereby, Charge.
 as beneficial owner (b), charge the sd este and hereds [and
 all other, if any, the hereds belonging to me, or over which I
 have any disposing power, to which the sd deeds and writings
 or any of them relate] with the repaymt of the sd sum of
 £—— and interest: And I undertake that I, my hrs, exs, Agreement
 or ads will, when required, at my or their own cost, execute to execute
 and deliver to the sd B., his exs, ads, or assigns, an effectual mort-
 legal mtge of the sd este and premes in such form and with gage (c).
 such covenants by me, my hrs, exs, or ads, and such powers

(a) This memorandum is under seal in order that the mortgagee may have the powers of sale and insuring and appointing receivers given to mortgagees by the Conv. Act, 1881, ss. 19 *et seq.*; see above, pp. 24, 44, 55, notes; but as the Act does not, it is conceived, enable the mortgagee to convey the legal estate to the purchaser, a power of attorney is added for the purpose.

(b) These words will imply covenants for title under the Conv. Act, 1881, s. 7, see p. 137, note.

(c) See as to the effect of an agreement to execute a legal mortgage, *Maxfield v. Burton*, L. R. 17 Eq. 15; an "effectual" mortgage, *Spencer v. Clarke*, 9 Ch. D. 137.

PREC. XLII. of sale and other provons as the sd B., his exs, ads, or assigns, may require for further securing the paymt of the sd principal monies and interest: And I hby irrevocably appoint the sd B., his exs, ads, and assigns, to be my attorney or attornies, for me and in my name and on my behalf, and as my act and deed or otherwise, to sign, seal, and deliver and otherwise perfect any deed or assurance, and to do every act which may be required or may be deemed proper on any sale of the sd hereds and premes, or any pt thof, under the power of sale conferred by these presents and the statute in that behalf in order to vest in the pchaser or pchasers the legal este and all other my este and interest in the sd premes: [And I further undertake to pay all costs and expenses attending the stamping of this deed (c)]: As WITNESS my hand and seal this — day of —.

Power of attorney to convey legal estate on a sale (d).
Provision as to stamping.

Two Schedules.

XLIII.

PREC. XLIII.

MEMORANDUM UNDER SEAL *to accompany the DEPOSIT of DEEDS, and AGREEMENT to EXECUTE a MORTGAGE, to secure an ACCOUNT CURRENT with BANKERS (f). VARIATIONS where the Deeds are deposited by a SURETY (g).*

(d) This power is made irrevocable by the Conv. Act, 1882, s. 8, and would have been so even before that Act, see *Abbott v. Stratten*, 3 J. & L. 603; but the effect of the Act where the equity of redemption has been dealt with or the mortgagor has died, seems doubtful; see p. 33, note. The power might, if desired, be extended so as to enable the mortgagee to execute a legal mortgage to himself acccrling to the mortgagor's undertaking.

(e) The insertion of the words in this bracket, though unnecessary, is not unusual. An agreement by the mortgagor to pay the penalty on stamping after the proper time cannot be enforced; *Abbott v. Stratten*, 3 J. & L. 603.

(f) See Precedent XXXII., and the notes thereto.

(g) See the notes to the last two Precedents.

KNOW ALL MEN, that I, A., *mortgagor*, of, &c., do hereby declare that the title deeds and writings, a list of which is contd in the schedule hto, relating to the hereds situate, &c., known as, &c., have been delivered and deposited by me to and with B., C., and D., of —, carrying on business as bankers and co-partners, *or*, “the — Banking Co., Limited,” for securing to them or to the psons or pson for the time being carrying on the sd banking business, their or his respive exs, ads, or assigns, *or*, “to the sd Co.,” the paymt of all such sums of money, [not exceeding £—,] as are now due, or shall from time to time be due to them or him from me, my exs, or ads, [from K., of, &c., *the person whose debt is to be secured*, his exs or ads], either on account current, or for money advanced or paid, or in respect of bills, drafts, or notes accepted, paid or discounted, interest, commission, or any other usual or lawful charges, or on any other account whatsoever, togr with all costs and expenses which may be incurred in respect of the premes: And I do hereby, as beneficial owner, charge all the sd hereds and premes [and all other hereds, if any, belonging to me, or over which I have any disposing power, to which the sd deeds and writings or any of them relate] with the paymt of all monies due or to become due as afsd: *Agreement as in last Precedent, to execute a mortgage to*, “the sd B., C., and D., or to the psons or pson for the time being carrying on the sd banking business, their or his respive exs, ads, and assigns,” *or*, “the sd — Banking Co., Limited,” *for securing*, “the paymt on demand of all such monies as afsd, with interest for the same at the rate of — per cent. per annum:” And I do hereby declare that the sd B., C., and D., or other the psons or pson afsd, their or his respive exs, ads, or assigns, *or*, “the sd — Banking Co., Limited,” may grant time or other indulgence to or compound with [the sd K., his exs or ads or] any other pson or psons liable on any bill, note, or other secy without discharging, or affecting this secy: And I further agree that all dividends, compositions, and paymts received from [the sd K., his exs or ads, or] any such other

PREC.
XLIII.

Charge.

Power to
bankers to
grant time
to prin-
cipal
debtor and
to drawers,
&c. of bills.
The secu-
rity to
extend to
ultimate
balance.

PREC.
XLIII.
—
To be
limited to
specified
sum.

person or persons as aforesaid, shall be taken and applied as payments in gross, and that this security shall extend to any ultimate balance which shall remain due as aforesaid: [PROVID ALWAYS, and it is expressly stipulated that this security and the liability of me, my executors and administrators hereunder, shall be limited to the sum of £—;] *Provision as to stamping as in last Precedent.*

AS WITNESS, &c.

Schedule.

XLIV.

PREC.
XLIV.
—

EQUITABLE CHARGE by DEED upon VARIOUS PROPERTIES real and personal for present and future ADVANCES (h) subject to PRIOR INCUMBRANCES. A person having a PRIOR CHARGE joins to postpone it (a). POWER of ATTORNEY to Mortgagee (b).

Recitals.
Title of
mortgagor.

Agreement
to post-
pone.

PARTIES, A., mortgagor, 1; B., prior equitable mortgagee, 2; C., mortgagee, 3: WHEREAS the said A. is entitled to the hereditaments and property mentioned in the first schedule hereto subject to the incumbrances mentioned in the second schedule hereto: *Agreement for loan*, p. 1, adding after the word, "thof," the words, "and also of every other sum or sums which may hereafter be advanced or paid by the said C., his executors, administrators, or assigns to or on account of the said A., his executors or administrators, with interest at the rate hereinafter mentioned;" AND WHEREAS the said B. has, at the request of the said A., agreed to concur in these presents for the purpose of postponing the charge to which he is entitled under the memorandum of agreement of, &c., mentioned in the

(h) As to mortgages to secure future advances, see p. 137, note; *Re Wallis*, 22 Ch. D. 5.

(a) See p. 85, note (b).

(b) See the notes to Precedents XLI. & XLII.

second schedule hto in mner hinafter appearing: NOW PREC. XLIV. THIS INDRE WITNETH that in conson of the sum of £——, now advanced by the sd C. to the sd A. (the rect Wit-nesseth. whof he doth hby acknowledge), he the sd A. doth hby, &c., Covenant to pay. *covenant for payment on demand of present and future advances*, p. 10, and interest after default, p. 11: AND THIS Further witnesseth. INDRE ALSO WITNETH that for the conson afsd the sd A. as beneficial owner (*see p. 137, note*), doth hby subj and charge ALL THE lands, hereds, reversion, policy, monies, and Charge. ppty specified in the first schedule hto, and all his este and interest therein (subject to the prior incumbrances mentd in the second schedule hto other than the charge of the sd B.), To AND with the paymt on demand to the sd C., his exs, ads, or assigns, of the principal monies and interest hinbefore covenanted to be paid to him or them by the sd A., his exs or ads, psuant to such covenant: AND THE sd A. Covenant to execute mortgage. doth hby also covenant with the sd C., his exs, ads, and assigns, that he the sd A., his hrs, exs, or ads, will at any time or times upon the request of the sd C., his exs, ads, or assigns, but at the cost of the sd A., his hrs, exs, or ads, make and execute to the sd C., his exs, ads, or assigns, a formal and effectual mtge or mtges of all or any of the sd hereds, ppty, and premes in such form and with such powers of sale and other powers and provons as the sd C., his exs, ads, or assigns, may require for further securing the monies intd to be hby secured as afsd: AND THE sd B., at the Postponement of prior charge. request of the sd A., doth hby postpone the charge upon the sd hereds, ppty, and premes to which he is entled under or by virtue of the memorandum of agreemt dated, &c., and expd to be made, &c., mentd in the sd second schedule hto, or otherwise howsoever, to the secy in favour of the sd C., his exs, ads, and assigns, intd to be hby effected: AND THE Power of attorney to mortgagee to receive rents (c), sd A. doth hby (subj to the rights of the sd prior incumbrancers) irrevocably empower the sd C., his exs, ads, and assigns, or any pson whom he or they may from time to time

(c) See p. 33, note, as to the power being irrevocable.

PREC.
 XLIV.
 —

get in re-
 version and
 policy
 moneys,

take legal
 proceed-
 ings,

make al-
 lowances,

give re-
 ceipts.

appoint as his or their substitute or agent in that behalf, at any time or times during the continuance of this secy in the name or names of the sd A., his hrs, exs, or ads, or otherwise to receive the rents and profits of the hereds which may for the time being be subjt to this secy from the present and future tenants and occupiers thof, and the psons liable to pay the same resply, AND to obtain paymt and transfer of the trust funds, monies, and ppty which may become receivable or transferable in respect of the reversionary interest and policy of assurance specified in the schedule hto, and any other monies, funds, or ppty which may be subjt to this secy, AND to enforce and use any lawful remedies or means for recovering and obtaining paymt or transfer of the sd rents and profits, funds, monies, and ppty, or any pt thof as effectually as the sd A., his hrs, exs, or ads, could do, AND upon paymt or transfer thof resply to allow any deduction thfrom in respect of expenses, legacy or succession duty, or on any other account which may be deemed proper or reasble, AND to give and execute effectual rects, reles, and discharges for or in relation thto, which rects, reles, and discharges shall exonerate the tenants, occupiers, trees, office, and other psons paying or transferring the same resply from seeing to the application thof, or being concerned to enquire whether any money is owing on this secy or otherwise as to the propriety of the rect thof by the sd C., his exs, ads, or assigns, or his or their substitute or agent.

IN WITNESS, &c.

The first Schedule above referred to.

1. Certain lands and hereds situate in the parishes of — and — in the county of —, held under a lease bearing date, &c., and made, &c.

2. The reversion of a sum of £—, expectant upon the decease of —, arising under the will of —, deceased.

3. Certain freehd lands and hereds situate in the parishes

of — and — in the county of —, which were conveyed
 • to the sd A. by an indre dated the — day of —, and
 expd to be made, &c. PREC.
XLIV.

4. The life este and interest of the sd A. in certain mes-
 suages, lands, and hereds, situate, &c., under a settlemt
 dated, &c., and made, &c.

5. A policy of assurance on the life of the sd A. for the
 sum of £—, effected in the — office, dated, &c., and
 numbered, &c.

The second Schedule above referred to.

*Incumbrances, giving the dates, names of incumbrancers, and
 amounts due (d).*

XLV.

EQUITABLE CHARGE *by deed of an* UNDIVIDED PREC. XLV.
 SHARE in HEREDITAMENTS *for securing* SEVERAL —
 SUMS *advanced by* THREE *separate* PERSONS (a).

PARTIES, A., mortgagor, 1; B., C., and D., mortgagees, 2;
Recite title of mortgagor; Agreement for loan, p. 8, form III.:
 NOW THIS INDRE WITNETH that in conson of the sd Wit-
nesseth.
 several sums of £—, £—, and £—, now paid by the
 sd B., C., and D., resp'y to the sd A. (the rect of which
 three several sums, making the total sum of £—, he doth

(d) Notice of this security must be given to the trustees of the reversion
 and the Assurance office; see as to the latter the "Policies of Assurance Act,
 1867," 30 & 31 Vic. c. 144. And notice should also be given to the prior in-
 cumbrancers to prevent them from tacking further advances, or, paying the
 surplus proceeds of a sale to the mortgagor, and to ensure that transferees of
 any of the prior incumbrances should take with notice, it will be desirable
 that notice should be indorsed on each of the prior charges.

(a) See the notes to Precedent XLI. ; and see the precedents of a contri-
 butory mortgage, p. 110, and the note thereto.

PREC. XLV. hby acknowledge), the sd A. doth hby, &c., *covenant for payment*, p. 11, *form VI.* AND THIS INDRE ALSO WITNESSETH. NETH that in further psuance of the sd agreemt and for the conson afsd, the sd A. as beneficial owner (e), doth hby charge ALL THAT one-fourth pt or share, and all other the pt or share and interest of him the sd A., of and in the sd mesuages, tenemts, and hereds, and the appurts thof, WITH the repaymt to each of them the sd B., C., and D., his exs, ads, or assigns, of the sum so lent by him as afsd, with interest thereon after the rate afsd psuant to the cbvenant hinbefore contd: AND THE sd A. doth hby covenant with each of them the sd B., C., and D., his exs, ads, and assigns, that he the sd A., his heirs, exs, or ads, will at his or their own costs when requested so to do by any of them the sd B., C., and D., or the exs, ads, or assigns of any of them, execute such mtge of the pt or share and interest hby charged of and in the sd hereds, with such covenants by the sd A., his hrs, exs, or ads, and such power of sale and other powers and provons as the pson or psons making such request shall reasbly require for the better and further securing the repaymt of all the sd monies and interest: PROVD ALWAYS, and it is hby agrd that the sd three sums of £—, £—, and £—, and the interest thereon, shall be chargeable upon and raiseable and payable out of the sd share and premes hby charged thwith, equally, and without any preference or priority between themselves.

IN WITNESS, &c.

XLVI.

PREC.
XLVI.

MEMORANDUM to accompany DEPOSIT of BONDS
and SHARE CERTIFICATES of Companies by way of

(e) See p. 137, note.

EQUITABLE MORTGAGE to Secure ANTECEDENT DEBT (a). PREC.
XLVI.

I, A., *mortgagor*, of, &c., do hereby declare that the bonds Charge. and the certificates of the several shares specified in the schedules hto have been deposited by me with B., *mortgagee*, of, &c., to secure to the sd B., his exs, ads, or assigns, the repaymt of the sum of £—— owing by me to him, with interest thereon from the —— day of —— last, payable half-yearly, after the rate of —— per cent. per annum, and I do hereby charge the sd bonds and shares with the repaymt of the sd sum of £—— and interest, and undertake that I, my exs or ads, will whenever required, at my or their own cost, execute and deliver to the sd B., his exs, ads, or assigns, proper transfers of the sd bonds and shares, and if necessary complete the same by registration: And I authorize the sd B., his exs, ads, or assigns, at any time, to sell the sd bonds or shares, or any of them, without any further consent on the pt of myself or my exs or ads, and to receive the proceeds of any such sale and the principal of any of the sd bonds which may be paid off, and the interest or dividends on the sd bonds and shares, with power to give effectual rects and discharges for any sum or sums of money so received, and to apply such monies after paymt and satisfon thereof of all costs and expenses incurred by him or them in respect of the premes in or towards the discharge of the monies owing on this secy, the surplus (if any) of the sd monies being duly accounted for to me the sd A., my exs, ads, or assigns: And I undertake to ratify and confirm every such sale as afsd, and to execute and do every instrument, act, and thing requisite for effectually vesting any bonds or shares so sold in the pchaser or pchasers thof:

Power of
sale, &c.

Under-
taking.

(a) See also Precedent XXXVII. If the memorandum were under seal a power of sale would be implied by the Conv. Act, 1881, s. 19, see p. 22, note; and a power of attorney might be given to the mortgagee "to execute and do all transfers, instrumts, and acts hinbefore covenanted to be made and done" by the mortgago; see Prec. XXXVII.

PRINC.
XLVI.
—
Declaration
of trust.

And I further declare that in the meantime and until such resipive bonds and shares shall have been effectually transferred by me, my exs or ads, to the sd B., his exs, ads, or assigns, or any pchaser or pchasers from him or them, I, my exs or ads, will be a tree or trees of the sd bonds and shares, or of such of them as shall for the time being remain unsold, for the sd B., his exs, ads, or assigns, so long as any money shall remain on the secy of these presents, And, after any such sale as afsd, will be a tree or trees of the bonds or shares sold for the pchaser or resipive pchasers.

IN WITNESS, &c.

Schedule.

XLVII.

PRINC.
XLVII.
—

WARRANT of ATTORNEY with DEFEASANCE as COL- LATERAL SECURITY for Money secured upon MORT- GAGE (a).

TO — and —, Solicitors of the Supreme Court of

Use of
warrant of
attorney
and de-
feasance.

(a) Occasionally it is wished to place the creditor in the position of a judgment creditor, so as to enable him to obtain speedy execution. This is effected by the mortgagor giving to the solicitors of the mortgagee an authority, called a warrant of attorney, usually but not necessarily under seal, to enter up judgment in an action to be brought by the mortgagee against the mortgagor for a specified amount, generally twice the amount of the loan, and defeasance specifying the use to be made of the judgment. The warrant of attorney is void, unless it is attested by a solicitor on behalf of the person giving the warrant expressly named by him and attending at his request to inform him of the nature and effect of the same before execution, who in the attestation declares himself to be his solicitor, and that he subscribes as such solicitor, 32 & 33 Vic. c. 62, s. 24 (re-enacting 1 & 2 Vic. c. 110, s. 9), and unless the warrant or a true copy of it is filed in the Queen's Bench Division within 21 days after execution with an affidavit of the time of execution, 3 Geo. 4, c. 39, s. 1, 32 & 33 Vic. c. 62, s. 26, and unless the defeasance (if any) is written on the same paper or parchment as the war-

Judicature in England jointly and severally, or to any other solor of the same Court.

PREC.
XLVII.

THESE ARE to desire and authorise you, the solors above-named, or any of you, or any other solor of the Supreme Court afsd, to appear for me, A., *mortgagor*, of, &c., in the Queen's Bench Division of the sd Court forthwith, and receive a declon for me in an action against me for the sum of £—— for money lent at the suit of B., *mortgagee*, of, &c., his exs or ads, and thereupon to confess the same action, or else to suffer a judgmt to pass against me in the same action, and to be thereupon forthwith entered up against me of record in the same Court for the sd sum of £——, togr with costs of suit: AND I do hby further authorise and empower you the sd solors, or either of you, after the sd judgmt shall be entered up as afsd for me and in my name, and as my act and deed, to sign, seal, and execute a good and sufficient rele to the sd B., his hrs, exs, and ads, of my right to appeal against the sd judgmt, and of and from all errors, defects, and imperfections made, done, or suffered, or to be made, done; or suffered, in or about any writ of execution issued for the ppose of enabling the sd B., his hrs, exs, ads, or assigns, to recover or enforce paymt of the sd monies or any pt thof. And for what you the sd solors, or either of you, shall do or cause to be done in the premes, or any of them, this shall be to you and each of you a sufficient warrant and authority: AND I have expressly named ——, of ——, gentleman, a solor of the Supreme Court afsd, and requested him to attend on my behalf, to inform me of the nature and effect hereof before

Warrant
of attorney.

To confess
judgment.

To execute
release of
right of
appeal.

Nomination
of attesting
solicitor.

rant before the latter is filed, 32 & 33 Vic. c. 62, s. 26. A warrant not executed as prescribed by statute is not rendered valid by proof that the person executing it did in fact understand its nature and effect, or was fully informed of the same, 32 & 33 Vic. c. 62, s. 25. Possibly warrants of attorney, which were almost obsolete, may come to some extent into use again in consequence of the restrictions imposed by the Bills of Sale Act, 1882, on that species of security, see p. 149, note. As to the use of warrants of attorney as a means of raising money by incumbents of benefices, see 2 Dav. Prec., part 2, p. 25, note. As to the stamp on a warrant of attorney, see the Stamp Act, 1870, Schedule, tit. "MORTGAGE."

PREC.
XLVII.
—

the same is executed, and to witness the due execution hereof by me: And I acknowledge that the sd — has accordingly attended and informed me of the nature and effect hereof before such execution.

IN WITNESS whereof, I have hereunto set my hand and seal, this — day of —.

The above-written warrant of attorney to confess judgmt was signed, sealed, and delivered by the above-named A., in the presence of me, —, of, &c., one of the solors of the Supreme Court. And I hby declare myself to be the solor for and on behalf of the sd A., expressly named by him, and attending at his request, and that I informed the sd A. of the nature and effect of the above-written warrant of attorney before the same was executed; And I also declare that I subscribe my name as such solor.

DEFEASANCE to be indorsed on the Warrant of Attorney for collaterally securing mortgage monies.

Recite the mortgage, p. 4.

Warrant of
attorney
to be a
collateral
security
for mort-
gage debt.
Execution
not to be
issued
until
default in
payment of
debt or

NOW BE IT KNOWN, that the within-written warrant of attorney is given as a further or collateral secy for the monies intd to be secured by the hinbefore recited indre of mtge; And, accordingly, that no execution shall be issued upon the judgmt to be entered up by virtue of the within-written warrant of attorney, unless or until the power of sale contd [implied] in the sd indre of mtge shall have become exerciseable [or some interest under the sd indre shall be in arrear and unpaid for fourteen days after becoming due,

or there shall be a breach of some covenant on the pt of the sd A. in the sd indre of mtge contd other than the covenant for paymt of the principal sum and interest thby secured]; But in case any such event as afsd shall happen, then and so often as the same may happen, it shall be lawful for the sd B., his exs, ads, or assigns, to issue or cause to be issued execution upon the sd judgment for such sum or sums of money as he or they shall require to be levied and raised in order to repay to himself or themselves the monies for the time being due on the secy of the sd indre, or any pt thof resp; Togr with costs of judgment as between solor and client, including therein the costs of registering judgment and writ of execution, sheriff's poundage, and officer's fees of keeping possession, auctioneer's charges, expenses of sale, expenses of applying to the Court or a judge for leave to issue execution when six years (a) shall have elapsed since the judgment or any change shall have taken place by death or otherwise in the parties entled or liable to execution, and all other incidental charges and expenses whatsoever: And the monies to be received from time to time upon any such execution shall be applied by the sd B., his exs, ads, or assigns, in or towards paymt of the monies for the time being due on the secy of the sd indre, or otherwise, according to the circes, so as to render the sd warrant of attorney and judgment a sufficient, effectual, and complete collateral secy for the principal monies and interest (b) intd to be secured by the sd indre of mtge, and all incidental costs and expenses.

PRBC.
XLVII.

performance of covenants. Power to issue execution in case of default. For principal debt or interest or other sums required for indemnity. With costs of judgment, &c.

Application of monies levied under judgment

(a) See the Judicature Act, 1875, first Schedule, Order XLII. (19).

(b) That the judgment will not prejudice the mortgagee's right to subsequent interest at the rate reserved by the mortgage, see *Popple v. Sylvester*, 22 Ch. D. 98.

XLVIII.

PREC.
XLVIII.

DEED of FURTHER CHARGE (*a*) of FREEHOLDS, COPYHOLDS, and LEASEHOLDS, the INTEREST being REDUCIBLE on punctual payment, by ENDORSEMENT on or ANNEXATION to the original mortgage. VARIATIONS for SEVERAL MORTGAGEES, and where the further charge is by INDEPENDENT deed (*b*).

Recitals. *PARTIES, A., mortgagor, 1 ; B., [C., and D.,] mortgagees, 2. [Recite lease and devolution (if any) of title to A., as in a conveyance on sale, see Vol. I., pp. 325, 326 ; Mortgage, setting out the covenant for payment of principal and interest, the conveyance and the proviso for redemption, and the trust*

Further
charge
should be
endorsed
or made
supple-
mental.

(*a*) As to deeds of further charge see 2 Dav. Prec., part 2, 756 ; Elph., Introd. Conv., 234. As to the stamps on further charges, see the Stamp Act, 1870, schedule "MORTGAGE," 2 Dav. Prec., part 2, p. 258, note.

(*b*) A further charge should, whenever convenient, be endorsed on the mortgage, as in the text ; otherwise it may, to save recitals, be made supplemental or annexed to the mortgage (see the Conv. Act, 1881, s. 53, Vol. I., pp. 75, 78, notes), in which case the following may be added after the "parties" ; "intended to be read as annexed, or, 'supplemental,' to an indre dated, &c., and expd, &c., being a mtge for securing the paymt of the sum of £— and interest to the sd B., [C., & D., on a joint account] ;" if there has been a previous further charge, add : "and to another indre dated, &c., and expd, &c., being a further charge for securing the paymt, &c." If there has been a transfer, the further charge may be annexed in like manner to the transfer. Where the further charge is annexed, the original deed will be referred to as "the hinbefore, or, 'above-mentd' indre of mtge," or by its date ; and other consequential alterations made throughout. If there has been more than one previous deed, it may be convenient to distinguish each by a short designation, by saying "hinafter called the mtge," or, "prior further charge," or, "transfer." If the further charge is by independent deed, the recitals which are bracketed will be inserted ; the other necessary verbal alterations will be obvious.

(if any) of the nominal reversion for the mortgagee, p. 4, and in the indre now in recital was contd a provo for reducing the rate of interest on the sd sum of £—— to the rate of —— per cent. per annum on punctual paymt, and [a power of sale and other] provons for further securing the paymt of the sd principal sum and interest]; *Conditional surrender of copyholds*, p. 5; *State of mortgage debt*, pp. 5 or 6: *Agreement for further advance*, p. 6, form xiv.: NOW THIS INDRE WITNETH, that in psuance, &c., and in conson, of the fresh advance, p. 8, covenant for payment of the sum now advanced, p. 9, on the next half-yearly day for payment of interest on original mortgage; and interest after default, p. 10: AND THIS INDRE ALSO WITNETH that in psuance, &c., and for the conson afsd, the sd A., as beneficial owner (see p. 74, note, p. 137, note), doth hby declare that ALL AND SINGULAR the hereds and premes comprd in the within-written [hinbefore recited] indre and thereby mtged, SHALL be a secy for and charged with the paymt to the sd B., his [B., C., and D., their] exs, ads, and assigns, of as well the sd sum of £——, the original mortgage debt, and all interest due and to grow due for the same, as the sd sum of £——, the new advance, and the interest thereon according to the covenant hinbefore contd, and shall not be redeemable until paymt to [him or] them of both the sd sums of £—— and £——, and the interest thereon resply: *Covenant by A. with "B., his [B., C., and D., their] exs, ads, and assigns," to surrender copyholds*, p. 76, subject to a condition for making void the surrender on payment of the new advance with interest from the date of the present deed, p. 19, form iv.; *Declaration of trust of copyholds till surrender, and power of attorney*, p. 33: AND IT IS HBY further agrd that the provons in the within-written [hinbefore recited] indre contd for reducing the interest on the within-mentd [sd] sum of £—— to the rate of —— per cent. per annum shall extend and apply to the principal monies and interest secured by these presents in the same mner as if the same provons were herein repeated with

PRBG.
XLVIII.
—

Wit-
nesseth.

Covenant
for pay-
ment.

Further
witnesseth.
Agree-
ment.

Parcels.

To be a
security for
further
advance.

Covenant
to sur-
render
copyholds.

Proviso for
reduction
of interest
to extend
to new
advance.

FORM.
XLVIII.
—
Powers in
mortgage
deed to
extend to
further
advance.

respect to the sd sum of £——, *the new advance*, and the interest thereon: AND that the [power of sale (c) and provons ancillary thto, and other] powers and provons in the within-written [hinbefore recited] indre contd for securing paymt of the sd sum of £——, and the interest thereon, shall extend and apply for further securing the paymt of the sd sum of £——, *the new advance*, and interest in like mner as if the last-mentd sum had formed pt of the principal money secured by the within-written [hinbefore recited] indre; [*In a mortgage to several add joint account clause, p. 89, if need be*] (d).

IN WITNESS, &c.

XLIX.

FORM.
XLIX.
—

DEED of FURTHER CHARGE of FREEHOLDS, COPYHOLDS, and LEASEHOLDS, *the original MORTGAGE*

(c) Where the statutory power of sale (as to which, see p. 22, note) is relied on in the mortgage, it will not generally be necessary to refer to it in the further charge, as it will continue to apply without express incorporation; and if the statutory power is modified by a provision in the mortgage, it will continue to apply, subject to such modification, without being expressly mentioned, by virtue of the clause in the text, extending all the provisions of the mortgage to the further advance. But the terms of the further advance may of course be such as to render some special extension or modification of the statutory power necessary, which must be effected by a separate clause. These remarks apply also to the statutory powers of insurance and appointing receivers, as to which, see pp. 44 and 55, notes.

(d) If the mortgage contained an attornment clause (but which would now only be valid in a mortgage by a company, see p. 52, note), the following might be added:—

Extension
of attorn-
ment
clause to
further
charge.

“AND FURTHER that the attornmt clause in the same indre contd shall henceforth be read and take effect as if a yearly rent of £—— in lieu of £—— were thby made payable by the sd, *mortgagors*, to the sd, *mortgagee*, his [*mortgagees*, their] hrs, exs, ads, and assigns.”

having been TRANSFERRED, the rate of INTEREST and half-yearly days of PAYMENT being ALTERED, and ADDITIONAL FREEHOLDS being added to the security (a).

PREC.
XLIX.
—

PARTIES, A., mortgagor, 1; B., mortgagee, 2. Recite lease, Recitals. &c., mortgage, and conditional surrender of copyholds, as in last Precedent; Transfer to B., see Vol. I., p. 323, *mutatis mutandis*; Conditional surrender to B. on the occasion of the transfer, p. 5; State of mortgage debt, p. 5; Title of A. to additional freeholds, Vol. I., p. 329: AND WHAS the sd B. Agree- ment. has agrd to lend to the sd A. the further sum of £——: CONSOLIDA- AND WHAS upon the treaty for the sd loan it was agrd that tion of the sd sum of £—— now due on the secy of the hinbefore original and new recited indre of mtge, and the sd sum of £——, the new advance. advance, should be consolidated into one principal sum of £——, and that interest should be hereafter payable on the sd aggregate principal sum at the rate of ——, in lieu of the hinbefore mentd rate of —— per cent. per annum, and that the paymt of the sd aggregate sum of £—— and interest should be secured in mner hinafter appearing: NOW WIT- THIS INDRE WITNETH, that in psuance, &c., and in nesseseth. conson of the sum of £—— now owing by the sd A. to the sd B. upon the secy of the hinbefore recited indre of mtge as afsd, and of the further sum of £—— now advanced by the sd B. to the sd A. (the rect, &c.), covenant for payment of aggregate debt with interest at new rate, p. 9, and for payment of interest at new rate after default, p. 10: AND Further Covenant for pay- THIS INDRE ALSO WITNETH that in psuance, &c., ment. and for the conson afsd it is hby agrd that ALL AND Further Agreement. SINGULAR the freehd and leasehd hereds and premes comprd in and mtged by the hinbefore recited indre of, &c., the Parcels. mortgage, and which were by the hinbefore recited indre of, &c., the transfer, granted and assigned to the sd B., his

(a) For variations for several mortgages, and for an endorsed or annexed deed, see the last Precedent; and see the notes to that Precedent.

PREC.
XLIX.

To be sub-
ject to new
proviso for
redemp-
tion.

Further
witnesseth.

Grant of
new free-
holds.

Proviso
for redemp-
tion.

Further
witnesseth.

Covenant
to sur-
render
copyholds.

Agreement
that powers
in original
mortgage
shall
extend to
new
advance.

hrs, exs, ads, and assigns resply, SHALL henceforth be discharged from the equity of redemption subsisting therein by virtue of the same indres, or either of them, but shall be subjt to the provo for redemption hinafter contd: AND THIS INDRE ALSO WITNETH, that in further psuance, &c., and for the conson afsd, the sd A., *grant by A., "as beneficial owner," of new freeholds to B. in fee subject to redemption, p. 74; Proviso for redemption, p. 18, form III., of, "all such pts of the hereds and premes comprd in the hinbefore recited indres, of, &c., the mortgage and transfer, as are of freehd tenure, and the hereds hinbefore granted," and, "of all such, &c., as are of leasehd tenure," on payment of the consolidated loan with interest: AND THIS INDRE ALSO WITNETH, Covenant by A. with B., his executors, administrators, and assigns, to surrender copyholds at the cost of A. to the use of B., p. 75, "discharged from the sd conditional surrender of the — day of —, but subjt to a condon for making void the surrender to be made psuant to this covenant corresponding to the provo for redemption hinbefore contd"; Declaration of trust of copyholds and power of attorney, p. 88; AND IT IS HBY agrd that the [power of sale for securing the sd principal sum of £—, the original loan, and the interest thereon, and all provons ancillary thereto, and other] powers and provons in the sd indre of mtge contd for securing paymt of the sd sum of £—, the original debt, and the interest thereon, shall extend and be applicable so as to be a secy for the sd total principal sum of £—, the aggregate debt, and the interest for the same at the rate of — per cent. per annum in like mnner as if such [power of sale and provons ancillary thto, and other] powers and provons, were herein repeated with such alterations only as would be necessary in consequence of the transfer of the sd mtge debt of £—, the original debt, and interest and the secs for the same to the sd B., and of the consequent substitution of the sd B. for the sd K., original mortgagee, and in consequence of the change in the amount of the principal sum secured, and of the rate of interest payable*

thereon, and in the respive days appointed for paymt of such principal sum and interest: [*Add power of sale of new freeholds*, p. 22, *unless the statutory power is relied on*] (b); [AND FURTHER THAT the covenants and provons in reference to the insurance of the mtged premes against fire in the sd indre of mtge contd shall extend and be applicable to the hereds and premes hinbefore granted in the same mner in all respects as if the same had been herein repeated with respect to all the hereds and premes mtged by the sd indre of mtge and these presents resply, with such alterations as may be necessary as afsd, and with the substitution of the sum of £—— in lieu of £—— as the total amount of the sd insurance] (c); *Mortgagee's indemnity clause*, p. 61.

PREC.
XLIX.

Insurance
clauses in
mortgage
to extend
to new
freeholds.

IN WITNESS, &c.

L.

DEED of FURTHER CHARGE to a BUILDING SOCIETY incorporated under the *Building Societies Act*, 1874 (d).

PREC. L.

PARTIES, A., a member of the — Building Society, incorporated under the *Building Societies Act*, 1874 (hinafter called the mtgor, which expression shall include his hrs, exs, ads, and assigns, where the context so requires or admits), 1; The sd — Building Society (hinafter called the Society, which expression shall include their assigns, where the context, &c.), 2; intd to be read as annexed to a certain indre of mtge from the mtgor to the Society,

(b) If the original mortgage contains an express power of sale, it might be extended to the new freeholds by a short clause; but this is objectionable, as it makes the former deed a title deed to that property.

(c) If the transfer gave any new powers, the above clauses should of course be modified so as to extend to such powers.

(d) See Precedent XXIV., and the notes thereto; and the notes to Precedent XLVIII.

PREC. L. dated, &c.: WITNETH that in conson of the further
Wit- sum of £—— now advanced by the Society to the mtgor,
nesseth. making up togr with the sum of £—— already advanced to
 him by the Society, and secured by the above-mentd mtge,
 the amount to which he is entled according to the rules of
 the Society in respect of —— shares held by him in the
 Society (the rect of which sum of £—— is hby acknow-
Covenant ledged), the mtgor hby covenants with the Society THAT he,
to pay by the mtgor, will pay to the Society according to the rules thof
instal- the sum of £—— per [month], *continue covenants by mort-*
**ments. *gagor for payment of instalments and fines in respect of new*
advance, p. 129: AND IT IS HBY agrd that all the hereds
Agreement described and comprd in the sd mtge of, &c., shall be a secy
that here- for and stand charged with the paymt to the Society of as
ditaments well the monies, fines, and fees payable in respect of the sd
shall be original advance of £—— secured by the sd mtge, as of the
charged monies, fines, and fees payable in respect of the sd further
with fur- advance of £——, and shall not be redeemable until paymt
ther ad- of the whole of the sd monies, fines, and fees, according to
vance. the covenants in the sd mtge and these presents contd:
Powers in AND THAT all the powers, trusts, covenants, and provons in
mortgage the sd indre of mtge contd for better securing the paymt of
to extend the monies, fines, and fees thby secured or otherwise re-
to further lating thto, shall extend and be applicable to secure the
advance. paymt of the monies, fines, and fees hby covenanted to be
 paid, in the same unner as nearly as may be as if such powers,
 trusts, covenants, and provons had been herein repeated
 with reference to all the monies, fines, and fees intd to
 be secured by the sd indre of mtge and these presents
 resply.**

IN WITNESS, &c.

LI.

DEED of FURTHER CHARGE by ENDORSEMENT on or PREC. LI.
 ANNEXATION to a mortgage of a LIFE INTEREST in
 PERSONALTY and POLICIES where a FRESH POLICY
 is added as Security (a).

PARTIES, A., mortgagor, 1; B., mortgagee, 2 [intd to be
 read as annexed, &c., see p. 202, note]. *Recite that new* Recitals.
policy has been effected by A. on his own life, p. 3; *State*
of mortgage debt, some interest being due, p. 6; *Agree-* Agree-
ment for further advance, p. 6, on having the paymt of the ment.
 sd sum of £—, *the further advance*, and interest at the
 within-mentd rate secured, and the paymt of the within-
 mentd sum of £—, and the interest now due and hence-
 forth to become due for the same, further secured in mner
 hinafter appearing. *First testatum as in Precedent XLVIII.* :
 AND THIS INDRE ALSO WITNETH that in psuance, Further
 &c., and for the conson afsd, and also in conson of the sd witnessth.
 sum of £—, *the old debt*, being owing by the sd A. to the
 sd B. as afsd, *continue assignment by A.* “as beneficial Assign-
 owner,” *of new policy subject to redemption, as in Prece-* ment.
dent XV.; *Proviso for redemption*, p. 18, “on paymt Proviso for
 of the sd sum of £—, *the old debt*, with interest thereon redemp-
 from the — day of —, at the rate afsd, and of the tion.
 sum of £—, *the fresh advance*, with interest thereon
 from the date of these presents at the rate afsd”: AND the Agree-
 sd A., as beneficial owner (see p. 65, note), doth hby declare ment
 that ALL AND SINGULAR the dividends, interest, and income, that pro-
 policies, monies, and premes by the within-written indre erty com-
 expd to be assigned, and also any new policy or policies prised in
 which may be effected according to the provons contd in original
 the same indre shall stand charged, &c., *continue clause* mortgage
shall be
charged
with fresh
advance.

(a) See the notes to Precedent XLVIII.

PREC. LI.

Provisions
in mort-
gage to
extend to
fresh
advance.

charging further advance, as in Precedent XLVIII.: AND IT IS HBY further agrd, that all the covenants, trusts, and provons contd in the within-written indre in reference to the policies thby mtged, or any substituted policies or policy, or to any monies which may be received under or by virtue of the same, and also the [power of sale and provons ancillary thto, and other] powers and provons therein contd, for securing paymt of the sd sum of £—, *the original debt*, and the interest thereon, shall extend and be applicable, so as to be a secy for the sd sum of £—, *the new advance*, and the interest thereon, as well as the withinmentd sum of £— and the interest thereon, in the same mner in all respects as if the same covenants, trusts, powers, and provons were herein repeated with such alterations as would be necessary in consequence of the change of the principal amount intd to be secured: AND FURTHER that [the power of sale and] (b) all the covenants, trusts, powers, and provons contd in the within-written indre in relation to the sd policies thby mtged, or any substituted policies or policy, or the monies to be received by virtue thof, shall extend and be applicable to the sd policy hby mtged, or any substituted policy or policies, and the monies which may be received by virtue thof, in the same mner in all respects as if the same [power of sale], covenants, trusts, powers, and provons, with such alterations as afsd, had been inserted in these presents with respect to the policy hby mtged, and any substituted policy or policies, and the monies to be received by virtue thof. *Mortgagee's indemnity clause*, p. 61.

And to new
policy.

IN WITNESS, &c. (c).

(b) See p. 204, note.

(c) Notice of this deed must be given to the trustees of the life interest and to all the offices. See p. 104, note.

LII.

MEMORANDUM of FURTHER CHARGE by ENDORSE- PREC. LII.
MENT on the mortgage. Applicable to any kind of —
Property. A Short Form.

I, the within named A., *mortgagor*, do hereby charge the within mtged — and premes with the paymt of the further sum of £—, this day advanced to me by the within named B., *mortgagee*, with interest thereon, at the rate of — per cent. per annum, payable on the — day of — and — day of —: AND I declare [that the provon in the within written indre contd for the reduction of interest on punctual paymt, shall extend to the interest on the sd further advance: AND FURTHER] that, *powers of mortgage deed to extend to further advance, p. 204.*

AS WITNESS my hand and seal, this — day of —.

LIII.

DEED by a TENANT FOR LIFE TRANSFERRING an PREC. LIII.
INCUMBRANCE affecting land SOLD under the —
SETTLED LAND ACT, 1882, to OTHER parts of the
Settled Estate (a).

PARTIES, A., tenant for life, 1; B., incumbrancer, 2.
Recite incumbrance affecting, "the hereds described in the Recitals.

(a) By the Settled Land Act, 1882, s. 5, the tenant for life as defined by s. 2, or other limited owner as defined by s. 58, under any settlement past or future, is empowered, with the consent of the incumbrancer, to charge an incumbrance affecting land sold or given in exchange or on partition on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold, &c., and by conveyance of the fee simple or Land Act.

PREC. LIII. 1st schedule hto togr with other hereds, but not comprising or affecting the hereds described in the 2nd schedule hto ;” *Devolution (if any) of the incumbrance to B. ; Settlement by which A. became,* “tenant for life in possion of the hereds described in the 1st and 2nd schedules hto togr with other hereds ;” AND WHAS the sd A., as tenant for life in possion under the sd settlemt, has recently with the concurrence of the sd B., sold the sd hereds described in the first schedule hto, and by an indre bearing even date but executed before these presents, and expd, &c., the same hereds have been conveyed to the pchaser free from the sd sum of £—— and interest, or, “the sd rentcharge of £——,” or, “the sd annuity of £——,” and from all claims and demands under the sd indre of, &c. ; *Recital that principal with some interest is due*, p. 6, or, “AND WHAS the sd rentcharge [annuity] has been paid up to the ——— day of ——— ;” AND WHAS the sd B. concurred in the sd conveyance of even date herewith upon the terms that the paymt of the sd sum of £—— and the interest now due, and henceforth to become due for the same, or, “the sd rentcharge,” or, “annuity,” should be [further] secured in mner hinafter appearing: NOW THIS INDRE WITNETH, that in psuance of the sd agreemt and in conson of the premes the sd A. as beneficial owner (*see* p. 65, *note*) by virtue of the powers vested in him under the Settled Land Act, 1882, and of every other power in this behalf him

Sale of
part of
land sub-
ject to
charge.

Agreement.

Wit-
nesseth.

other estate or interest the subject of the settlement, or by creation of a term of years in the settled land or otherwise, to make provision accordingly. See also s. 24 (4, 5, 6). These provisions do not apply to charges created by or in exercise of any power in the settlement, on which no money has been actually raised, as such charges are overreached by the exercise of the statutory powers of sale, &c., (see s. 20 (2)), and are *ipso facto* transferred to and attach upon the monies received on a sale, &c., and the lands taken on an exchange or partition. Notice of the intention to make the charge must be given to the trustees and their solicitor under s. 45.

This Precedent may be used, with the proper variations, for the case of a mortgage, or a gross or annual sum charged by an instrument prior to the settlement, where the owner of the charge is able to join.

enabling doth hby charge the hereds described in the 2nd schedule hto, with the paymt to the sd B. his [hrs] exs, ads, and assigns, of the sd sum of £—— and all interest now due and henceforth to become due for the same, *or*, “with the paymt of the sd rentcharge, *or*, ‘annuity,’ of £—— from the sd —— day of —— last, upon the respive days and in the mner provd by the sd indre of, &c.,” in exoneration and substitution for the sd hereds described in the first schedule hto [and so that the sd B. his [hrs] exs, ads, and assigns shall have and may exercise all such and the like powers and remedies for the recovery and obtaining paymt of the sd rentcharge, *or*, “annuity,” against or in respect of the sd hereds described in the sd 2nd schedule hto, or any pt thof, as were created or conferred by the sd indre of, &c., against or in relation to the sd hereds described in the sd 1st schedule hto, or may be conferred or arise by statute by virtue of these presents (b)]. *Further*

(b) This refers to the Conv. Act, 1881, s. 19, giving powers of sale, &c., to mortgagees, and also to s. 44 of the same Act, giving to the owner of a rentcharge or other annual sum charged on land, remedies by distress and entry, or by limiting a term to trustees for raising the arrears, which last-mentioned section applies, as the annual sum must, it is conceived, be considered for this purpose as “arising under” the present deed. For a rentcharge or annuity the deed will stop here, unless it is thought fit to give express powers of distress and entry (for forms of which see *infra*, SETTLEMENTS), or to limit a term to trustees or the owner of the rentcharge or annuity as further security. In the latter case continue as follows :

“*Further testatum*, the sd A., as beneficial owner (see p. 65, *note*), by virtue, &c., *as above*, doth hby bargain, sell, and demise (see *as to this form*, p. 105, *note*) the sd hereds described in the sd 2nd schedule hto to the sd B., his exs, ads, and assigns, for the term of —— years to commence from the date of these presents without impeachment of waste, to the intent that the sd B., his exs, ads, or assigns may by and out of the rents and profits of the sd premes or by the sale of timber or minerals, or by mtge of the sd premes, or any pt thof, for the whole or pt of the

PREC. LIII. *testatum*, "The sd A., as beneficial owner (*see* p. 74, *note*),
 Convey- by virtue, &c., *as above*, doth hby grant, &c., conveyance of
 ance. hereditaments in second schedule as in Precedent I., p. 74,
 saying, "subjt to such or the like right or equity of redemption
 as the sd hereds comprised in the first schedule hto
 were subj to immediately before the execution of the hin-
 before recited indre of even date herewith on paymt to the
 sd B., &c., *as above*. [Covenant by A. with B., his exs, ads,
 and assigns, that the sd A. will during his life in case and
 so long as the sd sum of £ —, or any pt thof, shall remain
 unpaid pay to him or them interest for the same at the
 rate afsd as from the sd — day of — last, by equal half-
 yearly paymts on the — day of — and — day of —
 in every year (c)]: *Mortgagee's indemnity clause*, p. 61 ;
*Acknowledgment and undertaking by A., as to the settlement
 and any other muniments material to the mortgagee which are
 retained by A.*, p. 62.

Covenant
for pay-
ment of
interest.

IN WITNESS, &c.

LIV.

PREC. LIV.

TRANSFER of MORTGAGE of FREEHOLDS, LEASEHOLDS,
 and COPYHOLDS, where the MORTGAGOR is NOT a
 PARTY. VARIATIONS where NO SURRENDER has

sd term, raise the sd rentcharge [annuity] hby charged
 thereon, and all arrears thof, and all costs incurred by him or
 them in respect of the premes. *If so agreed, add covenant by
 A. for payment during his life, and acknowledgment and
 undertaking by him as to the settlement, &c., as in the text.*"

(c) A power of sale and provisions for insurance if proper might be inserted ;
 otherwise the statutory provisions, (*see* p. 22, *note*, p. 44 *note*), would apply ;
see the last *note*.

been made of the Copyholds, and for the case of the PREC. LIV.
MORTGAGEE being DEAD, and where the original
MORTGAGE was made to TRUSTEES (a).

PARTIES, A. [and B.], mortgagees, 1; C. [D., and E.],

(a) As to transfers of mortgages, see 2 Dav. Prec., part 2, p. 264, Elph. Intro. Conv., p. 221. The transfer may be shortened as to the recitals by endorsing it on the mortgage or previous transfer, which, however, is not generally convenient, or otherwise by making it supplemental or annexed to the mortgage or previous transfer; the variations in either case being similar to those indicated in p. 202, note, in the case of a further charge. As to endorsing or annexing a transfer.

The Conv. Act, 1881, gives in the 3rd schedule, part II., three very short forms of statutory transfer of mortgage, of freeholds or leaseholds, which are available where the original mortgage was in the statutory form given in part I. of the same schedule, as to which see p. 81, note, and have a special operation as provided by ss. 27 & 28 of the Act; these forms are given, *infra*. As to the forms of statutory transfer in the Conv. Act, 1881.

If the mortgagee be dead, the frame of the transfer depends on whether he died since 1881 or not. If since, any mortgaged estate of inheritance or *pur autre vie* in freeholds and copyholds vests under the Conv. Act, 1881, s. 30, whether he died testate or intestate, in his personal representatives, who can therefore transfer both the debt and all the securities. If the mortgagee died before 1882, any legal estate in the freeholds or copyholds which may have been vested in him would pass to his heir or devisee; and as the 4th section of the Vendor and Purchaser Act, 1874, which enabled the personal representatives of a mortgagee to convey (and which though repealed by the Conv. Act, 1881, s. 30, remains in force as to mortgagees dying before 1882), applies to re-conveyances on redemption only, and not to transfers (*In re Spradbery*, 14 Ch. D. 514), the heir or devisee must in that case be a party to convey the legal estate. The variations, therefore, for the case of the mortgagee being dead will be as follows:—If he died before 1882, his heir or devisee, if not the same person as the personal representative, will be a party of the 2nd part. After the recital of the mortgage recite the will of the mortgagee stating the appointment of executors, and (if he died before 1882) the devise (if any) of mortgaged estates, his death and the probate, or recite his death intestate the grant of administration, and (if he died before 1882) the heirship, and that the heir or devisee, “has, at the request of the sd exor, or, ‘admor,’ agrd to join in these presents in mner hinafter appearing.” The heir or devisee (if a party), will “as tree” (implying a covenant against incumbrances, see p. 64, note,) convey the freeholds and covenant to surrender the copyholds at the request of the executor or administrator. If there has been no surrender of the copyholds, the personal representative “as mtgee,” together with the heir “as tree,” if the covenant was entered into with him and the mortgagee died before 1882, Variations where the mortgagee is dead.

PREO. LIV. transferees, 2. Recite (b) lease, Vol. I., p. 325; and devolution, if any, thereof to mortgagor, Vol. I., p. 326; Mortgage, p. 4, stating the covenant for payment, the provision, if any, for reduction of interest on punctual payment, and for continuance of loan for a term certain [if the mortgage was to several one of whom has died, the joint account clause, if any], the grant of the freeholds, and demise or assignment of the leaseholds, the proviso for redemption, the declaration of trust, if any, of the nominal reversion of the leaseholds, the covenant to surrender the copyholds, and the declaration of trust, if any, till surrender, setting out all the parcels at length; [Admission, if any, of the mortgagee to copyholds, Vol. I., p. 319, adding the words, "saving the right of any psons having an equity of redemption in the sd premes"]; State of mortgage debt, some interest being due, p. 6; Agreement for the transfer, p. 6, form xv., where the money advanced belongs to the transferees on a joint account, say, "the sd sum of £—— out of monies belonging to them on a joint account." NOW THIS INDRE WITNETH that in psuance of the sd agreemt, conson, p. 8, the amount being the total sum due for principal and interest on the mortgage, the sd A. as mtgee (c), doth [A. and B. as mtgees do] hby assign unto the sd C., his [C., D., and E., their] exs, ads, and assigns, ALL THAT the sd principal sum of £—— secured by the hinbefore recited indre of mtge as afsd, and the interest now due, and henceforth to become due, for the same, and the

**Wit-
nesseth.**

**Assign-
ment.
Mortgage
debt.**

must assign the benefit of the covenant. The personal representative "as mtgee" will assign the debt and leaseholds.

Stamps on transfers. As to the stamps on transfers of mortgage, see the Stamp Act, 1870, schedule, title, MORTGAGE, *Wale v. Commissioners of Inland R.*, 4 Ex. D. 270, 2 Dav. Prec., part 2, p. 275, note, and the Conv. Act, 1882, s. 27 (4).

(b) If the transfer is endorsed on the mortgage, omit the recitals of the lease and mortgage, and refer to the lease as the "within recited indre of lease," to the mortgage as "the within written indre," and make other consequential alterations.

(c) The words "as mtgee" imply a covenant against incumbrances by the transferor, or by each of them if more than one as to his own acts

benefit of all secs for the same (*d*) ; To HOLD the same PARC. LIV. Habendum.
 UNTO the sd C., his [C., D., and E., their] exs, ads, and assigns absolutely. AND THIS INDRE ALSO WIT-
 NETH that in further psuance of the recited agreemt, and To trans- ferees.
 for the conson afsd, the sd A. as mtgee (*e*) doth [A. and B. as mtgees do] hby grant unto the sd C., his [C., D., and E., their] hrs and assigns, ALL AND SINGULAR the freehd hereds Further witnesseth. Grant. Freeholds.
 and premes expd to be granted or assured by the hinbefore recited indre of mtge of the — day of —, or which are now by any means (*f*) vested in the sd A. [and B.] subjt to redemption by virtue of the same indre, *omitting general words and estate clause, see Vol. I., pp. 357, 359, notes:* To Haben-
 HOLD the sd hereds and premes UNTO AND TO THE USE of dum.
 the sd C., his [C., D., and E., their] hrs and assigns, SUBJT To use of trans- ferees.
 to such right or equity of redemption as the same premes are now subjt to by virtue of the hinbefore recited indre of Subject to proviso for redemp- tion.
 mtge on paymt to the sd C., his [C., D., and E., their] exs, ads, or assigns, of the sd sum of £—, *the principal*, and the interest now due and henceforth to become due for the same : AND THIS INDRE ALSO WITNETH that in Further witnesseth.
 further psuance of the recited agreemt and for the conson afsd, the sd A. as mtgee (*e*) doth [A. and B. as mtgees do] Assign- ment.
 hby assign to the sd C., his [C., D., and E., their] exs, ads, and assigns, ALL AND SINGULAR the leasehd hereds and Lease- holds.
 premes expd to be demised [assigned] by or which are now by any means vested in the sd A. [and B.] subjt to redemp- tion by virtue of the hinbefore recited indre of mtge of the

only, as to the mortgage debt, and the freeholds, leaseholds, and copyholds, see p. 64, note.

(*d*) As to the omission of the power of attorney, see Vol. I., p. 112, note. If there is any doubt as to the possibility of immediately giving notice to the mortgagor, the power of attorney should be inserted.

(*e*) See note (*c*), p. 216, *ante*.

(*f*) If the mortgage is an old one, and there may have been accretions to the property arising from enclosures, &c., say, "or which are now by means of any enclosure, exchange, allotmt, award, or otherwise vested, &c."

PRINC. LIV. — day of —, [if the mortgage contains a declaration of trust of the nominal reversion, add, and with the benefit of the trust decl'd in favour of the sd A. [and B.] by the sd indre of mtge of the sd nominal reversion[s] thby reserved of the sd term [respive terms] created by the sd indre [respive indres] of lease;] *omitting general words and estate clause*, To HOLD the same hereds and premes UNTO the sd C., his [C., D., and E., their] exs, ads, and assigns, for the residue of the sd term [several terms] for which the same premes were [resply] demised [assigned] by the hinbefore recited indre of mtge [and for all the este and interest of the sd A. [and B.] in the sd nominal reversion[s] reserved by the same indre of the sd term [respive terms] created by the sd indre [respive indres] of lease] subj't to such right or equity of redemption as afsd: AND THIS INDRE ALSO WITNETH that in further psuance of the recited agreemt and for the conson afsd, the sd A. as mtgee (g) doth [A. and B. as mtgees do] hby covenant with the sd C., his [C., D., and E., their] exs, ads, and assigns, *to surrender*, p. 76, "at the cost of the sd C., his [C., D., and E., their] exs, ads, or assigns, the sd copyhd or customaryhd hereds and premes comprd in the hinbefore recited surrender of the — day of —, *omitting general words and estate clause*, To THE USE of the sd C., his [C., D., and E., their] hrs and assigns, according to the custom, &c., subj't to such right or equity of redemption, &c., as above: *Declaration of trust till surrender and power of attorney*, p. 33 (a): [If the transfer is to several, add, if need be, *joint account clause*, p. 39 (b)].

IN WITNESS, &c. (c).

Haben-
dum.
To trans-
ferrea.

Further
witnesseth.

Covenant
to sur-
render
copyholds.

To use of
transferees.

(g) See note (c), p. 216, *ante*.

(a) If the mortgagor's concurrence cannot be obtained, the mortgagee must

(b) As the Conv. Act, 1881, s. 61, applies to transfers to several on a joint account, the above clause may in general be omitted as in an original mortgage; see p. 39, note.

(c) Notice of the transfer must be given to the mortgagor.

LV.

TRANSFER of MORTGAGE of FREEHOLDS, LEASE-
 HOLDS, and COPYHOLDS, where the MORTGAGOR is a
 PARTY and has NOT INCUMBERED the equity of re-
 demption, and where a NEW COVENANT for pay-
 ment and PROVISIO for REDEMPTION and NEW
 POWERS are inserted (a). VARIATIONS for a MORT-

PREC. LV.

be admitted on the surrender to him, and then surrender to the use of the transferee, subject to the mortgagor's equity of redemption. If the mortgagor is willing to concur, and has not encumbered the equity of redemption, the original surrender should be vacated, and a new surrender taken from the mortgagor to the transferee. Having regard to the latter alternative, a covenant that the mortgagee will obtain admittance is not inserted in the text, but is, if necessary, implied. If there has been no surrender, and the mortgagor does not concur, the following assignment of the benefit of the covenant to surrender must be substituted for a covenant to surrender—"The said A as mtgee doth [A. and B. as mtgees do] hby assign unto the sd C., his [C., D., and E., their] hrs and assigns, ALL AND SINGULAR the sd copyhd or customaryhd hereds and premes by the hinbefore recited indre of mtge covenanted to be surrendered, TOGE WITH the benefit of the sd covenant for the surrender of the sd premes, with full power to sue thereon in the name or names of the sd A., his [A. and B., their] exs or ads, and all other powers and means necessary for enforcing the performance of the same, To HOLD the same premes UNTO the sd C., his [C., D., and E., their] hrs and assigns, subjt to such right," &c., as in the text.

As to transfers of mortgages of copyholds.

(a) It has been the usual practice in this case to arm the mortgagee with new powers as in an original mortgage, if it is sufficiently certain that the equity of redemption has not been incumbered. Where brevity is desired, the old powers may be relied on, the deed in that case following the form of the next Precedent, or if new powers are preferred, the statutory powers of sale, &c., (as to which, see pp. 22, 44, and 55 notes) may be relied on, but for this purpose a clause expressly incorporating them must be inserted, as the deed might be held to be a transfer only, and not a "mortgage" within the Conv. Act, 1881, s. 19.

As to giving new powers in a transfer.

PREC. LV.

GAGE TO TRUSTEES, for the case of the MORTGAGEE being DEAD (b), and where the mortgagor receives a FURTHER ADVANCE (c).

PARTIES, A., [B., and C.,] mortgagees, 1; D., mortgagor, 2; K., [L., and M.,] transferees, 3. Recite the lease, &c., and mortgage as in the last Precedent, and noticing also, as in

Recitals.

As to making the transfer by endorsement on, or annexation to the mortgage, see p. 215, note.

As to the stamp on such a transfer.

Although a deed such as that in the text, creating a new equity of redemption, and giving new powers, constitutes in effect a new mortgage, it is chargeable with stamp duty as a transfer only, see the references in p. 216, note.

Variations where mortgagee is dead.

(b) If the mortgagee be dead, his personal representative, and also (if he died before 1882, see p. 215, note), his heir or devisee will be a party. The recitals will be the same as those indicated on p. 215, note, with the addition of a recital of the admission of his customary heir or devisee, if such has been taken. The heir or devisee will grant the freeholds "as tree" at the request of the personal representative and of the mortgagor; and if the mortgagee has been admitted, will "as tree" at the like request concur in the covenant to surrender. The personal representative will, "as mtgee" assign the mortgage debt and the leaseholds at the request of the mortgagor.

Variations where mortgagor receives a further advance.

(c) This Precedent can readily be adapted to the case of the mortgagor receiving a further advance on the occasion of the transfer. Instead of the recital of the agreement for the transfer, say, "AND WHAS the sd K. has [K., L., and M., have] agrd, at the request of the sd D., to pay to the sd A., [B., and C.] the sd sum of £—, and to lend to the sd D. the further sum of £— upon having such transfer as is hinafter contd of the sd mtge debt of £— and interest, and the secs for the same, and upon having the repaymt of the sd sum of £—, the further advance, and interest secured, and of the sd sum of £—, the original debt, and interest further secured, in mner hinafter appearing." After the assignment of the debt the following clause should be added:—"AND IT IS hby agrd that the benefit of the [power of sale, and all other] powers, remedies, and secs contd in or given by the hinbefore recited indre of mtge for securing or recovering the sd principal sum of £—, the original debt, and interest, shall extend and be applicable so as to be a further secy for the sd sum of £—, the further advance, and interest, as if the sd sum of £— had formed pt of the

Precedent XLVIII., that it contains a power of sale and other provisions for securing payment of the mortgage monies (d) ; Surrender of copyholds, Vol. I. p. 319 [and admittance, p. 5, adding at the end of the form, " saving the rights of all psons interested in the equity of redemption of the sd premes "]; If D. is not the original mortgagor, recite shortly the devolution of title to the equity of redemption, or say, "AND WHAS the equity of redemption of the sd freehd, leasehd, and copyhd premes comprised in the sd indre of mtge is now vested in the sd D. ;" Present state of mortgage debt, all interest having been paid, p. 5 ; Agreement for transfer and further advance, p. 6 ; NOW THIS INDRE WIT- PREC. LV.

NETH that in psuance of the recited agreemt, and in conson of the sum of £—— now paid to the sd A. [B., and C.] by the sd K., [L., and M., out of monies belonging to them on a joint account] at the request of the sd D., Receipt, the sd A. [B., and C.,] as mtgee[s], (see p. 216, note), at the request of the sd D., doth [do] hby assign unto the sd K. (e), his [K., L., and M., their] exs, ads, and assigns, ALL THAT the sd principal sum of £—— so owing to the sd A., [B., and C.,] upon the secy of the hinbefore recited indre of mtge, of, &c., as hinbefore mentd, AND all interest hence- Wit-
nesseth.

forth to become due for the same : AND the benefit of the power of sale and all other powers, remedies, and secs contd Assign-
ment of
mortgage
debt.
And
interest.
And
powers.

principal money secured by the hinbefore recited indre, and hinbefore assigned to the sd K., his [K., L., and M., their] exs, ads, and assigns." See also Prec. XLVIII. The proviso for redemption and the power of sale, if any, will extend to the aggregate amount of the original debt and further advance.

(d) It is sometimes convenient, where the mortgagor is a party, to give the description of the parcels in the operative part as in a new mortgage. See 2 Dav. Prec., part 2, p. 782, note. In that case the property may be referred to in the recital of the mortgage as "the hereds intended to be hby granted."

(e) As to the enactment in the Conv. Act, 1881, s. 15 (as amended by the Conv. Act, 1882, s. 12), making it obligatory on a mortgagee, if required, to transfer the debt and security to a third person instead of reconveying, see p. 17, note.

PREC. LV. in or given by the sd indre of mtge for securing or recovering the sd principal sum and interest, *omitting estate clause, see Vol. I., p. 359, note*, To HOLD the same UNTO the sd K., his [K., L., and M., their] exs, ads, and assigns, absolutely; **Habendum.** **AND THIS INDRE ALSO WITNETH** that in further **To trans- farees.** psuance of the recited agreemt and for the conson afsd, **Further witnesseth.** *Covenant by D. with K., [L., and M.,] for payment on the next day for payment of interest (e), p. 9; and interest after default, p. 10; AND THIS INDRE ALSO WITNETH* that in further psuance, &c., and for the conson afsd, the sd **Covenant for pay- ment.** A. [B., and C.,] as mtgee[s] (f), at the request of the sd **Further witnesseth.** D., doth [do] hby grant, and the sd D. as beneficial **Grant of freeholds.** owner (f), doth hby grant and confirm, unto the sd K., his [K., L., and M., their] hrs and assigns, *Freehold parcels by reference to the mortgage as in last Precedent, or if thought desirable, set them out at length, as in an original mortgage;* To HOLD the same hereds and premes UNTO AND TO THE **Habendum.** USE of the sd K., his [K., L., and M., their] hrs and as- **To trans- farees sub- ject to new proviso for redemp- tion.** signs, free from all right or equity of redemption, under or by virtue of the hinbefore recited indre of mtge, but subjt to the provo for redemption hinafter contd: **Further witnesseth.** **AND THIS INDRE ALSO WITNETH** that in further psuance, &c., and for the conson afsd, the sd A. [B. and C.] as mtgee[s] (f), **Assign- ment of leaseholds.** at the request of the sd D., doth [do] hby assign, and the sd D. as beneficial owner (f) doth hby assign [*or if the mortgage was by demise, demise*], and confirm unto the sd K., his [K., L., and M., their] exs, ads, and assigns, *Leasehold parcels by reference to mortgage as in last Precedent, or if thought proper by reference to lease as in original mortgage; Habendum to K., [L. and M.] as in original mortgage, free from the old and subject to new proviso for redemption as above; Proviso for redemption, p. 18, form III.; If the mortgage was by demise insert declaration of trust by D. of nominal rever-*

(e) If convenient, the days for payment of interest may be altered.

(f) This implies a covenant against incumbrances by the transferor, and full covenants for title by the mortgagor, see p. 216, note, p. 64, note, p. 76, note.

sion of leaseholds and power of attorney, p. 84 : AND THIS PREC. LV.
 INDRE, &c., if there has been no surrender, or a surrender Further
 but no admittance on the mortgage, add a covenant by D., "as witnesseth.
 beneficial owner," but if there has been both a surrender and Covenant
 admittance, a covenant by A., [B., and C.] "as mtgee[s]" (f), to sur-
 and by D. "as beneficial owner" (f), with, "K, his [K, L., and render
 M., their] exs, ads, and assigns," to surrender the copyholds, copyholds.
 described by reference to the mortgage and surrender, as in the
 last Precedent, or, if thought proper, by a new description, "at
 the cost of the sd D., his hrs, exs, ads, or assigns," "free
 and discharged from the equity of redemption now subsist-
 ing therein by virtue of the hinbefore recited indre of mtge
 and surrender, [and admittance] but subjt, &c.;" Condition
 for making void the surrender, p. 19, form v.; Declaration of
 trust by D. or by A., [B. and C.], as the case may be, till sur-
 render, p. 33; Covenant to insure and repair if appropriate,
 p. 44, and power of sale, p. 29, or, if the statutory powers are
 relied on, in lieu of the covenant to insure and power of sale,
 insert the following clause: "AND IT IS hby agrd that the
 powers of sale and insurance and appointing receivers con-
 ferred on mtgees by statute, and the provisions subsidiary or
 incidental thto, shall apply to these presents, and to all the
 sd mtged premes," and add the covenant supplemental to the
 statutory provisions for insurance, p. 46. Proviso keeping
 alive power of sale in original mortgage, p. 32 (g). Mortgagee's
 indemnity clause, p. 61. [Add for several transferees, if need
 be, joint account clause, p. 89, see p. 218, note, and clause as
 to devolution of mortgagees' powers, p. 68].

IN WITNESS, &c.

(f) See note (f), previous page.

(g) See *Boyd v. Petrie*, L. R. 7 Ch. Ap. 385.

LVI.

PREC. LVI.

TRANSFER of MORTGAGE of FREEHOLDS, LEASEHOLDS, and COPYHOLDS, where the MORTGAGOR is a PARTY, and has INCUMBERED the equity of redemption, and there has been a PREVIOUS TRANSFER. VARIATIONS for a mortgage to TRUSTEES.

PARTIES, A., [B., and C.], mortgagees, 1 ; D., mortgagor, 2 ; K., [L., and M.], transferees, 3. Recite the lease, &c., and mortgage, as in Precedent LV. ; Transfer of mortgage to A. [B., C., and X.] setting out the transfer of the debt, the covenant, if any, for payment, the conveyance of the mortgaged property, with the proviso, if any, for redemption, and noticing any new powers given, and if the transfer is to several, one of whom has since died, setting out the joint account clause, if any ; Surrender, if any, of copyholds on the occasion of the transfer, p. 5 ; [Death of X.] ; Present state of mortgage debt, some interest being due, p. 6 ; Agreement for transfer, p. 6 ;

Recitals. **NOW THIS INDRE WITNETH** that in psuance of the recited agreemt, *Consideration*, p. 8, *Assignment of mortgage debt, as in last Precedent, saying*, "indres of mtge of, &c., and transfer of, &c., respdy," and, "all interest due and to become due for the same" ; **AND THIS INDRE ALSO WITNETH, &c., covenant by D. for payment of principal on next day for payment of interest, with interest, "as from the — day of — now last past," i.e., the last day up to which interest was paid, p. 9, and interest after default, p. 10 ; AND THIS INDRE ALSO WITNETH, &c., grant by A., [B. and C.] of freeholds and assignment of leaseholds, and of his or their interest in the nominal reversion of leaseholds, and habendum, as in last Precedent, except that D. will not join in the grant and assignment, which will be expressed to be made at his request, and except that the property will be described as that which was conveyed by**

Witnesseth.

Assignment of debt.

Further witnesseth.

Covenant for payment.

Further witnesseth.

Grant and assignment.

the previous transfer instead of the original mortgage : AND PRECED. LVI.
THIS INDRE ALSO WITNETH, &c., the sd A. [B. and Further
C.], at the request of the sd D., doth [do] hby covenant witnesseth.
with the sd K., his [K., L., and M., their] exs, ads, and Covenant
assigns, THAT he the sd A., or his [they the sd A., B., and by mort-
C., or their] hrs will forthwith, at the costs of the sd D., gages to
his hrs, exs, ads, or assigns, procure [himself or] themselves be ad-
to be admitted [tenant or] tenants of the sd copyhd or mitted,
customaryhd hereds and premes compd in the hinbefore and sur-
recited indre, &c., *the previous transfer*, and the surrender render
of, &c. : AND WILL forthwith after such admittance, at the copyholds.
like costs, well and effectually surrender the same, *continue*
covenant to surrender, as in Precedent LIV. (a) : AND FURTHER And in the
that in the meantime, and until such surrender shall be meantime
made, the sd A., his [A., B., and C., their] hrs and assigns, to hold pre-
will stand seised of the same premes in trust for the sd K., mises in
his [K., L., and M., their] hrs and assigns, subject to such trust for
right or equity of redemption as is now subsisting therein transferee.
as afsd ; *Covenant by D. with*, "K., his [K., L., and M., Covenant
their] exs, ads, and assigns, that he, the sd D., his hrs, exs, by mort-
or ads, will on demand repay to the sd K., his [K., L., and gagor to
M., their] hrs, exs, ads, or assigns, ALL AND EVERY sum or repay
sums of money which [he or] they may pay in respect of the sums paid
admission of the sd A., his [A., B., and C., their] hrs or by trans-
assigns, to the sd copyhd premes, and the subsequent sur- feree for
render by [him or] them, according to the covenant hin- admission.
before contd, WITH interest thereon at the rate afsd from
the time or times of paymt, and that in the meantime the
same monies and interest shall be a charge on the sd mtged
premes ; " [*Declaration if need be that money belongs to K.,*
L., and M., on a joint account, p. 39, see p. 218, note].

IN WITNESS, &c.

(a) As to the mode of transfer of copyholds, see p. 218, note (a).

LVII.

PREC. LVII. ADMITTANCE *of a MORTGAGEE to COPYHOLDS, preparatory to a TRANSFER.*

Manor of — }
County of — } The — day of —.

Recitals. WHAS on the — day of —, A., *mortgagor*, of, &c., one
Surrender. of the copyhd tenants of the sd manor, came before me, X. [deputy] steward of the sd manor, and did out of court surrender into the hands of the lord of the sd manor, *parcels*, to the use of B., *mortgagee*, of, &c., his hrs and assigns, according to the custom of the sd manor by and under the rents, fines, [heriots], suits, and services due and of right accustomed for the same, subjt to a condon for making void the same surrender on paymt by the sd A., his hrs, exs, ads, or assigns, to the sd B., his exs, ads, or assigns, of the sum of £—, with interest for the same at the rate therein mentd on a day now past: AND WHAS the sd sum of £— with some interest remains due to the sd B.; NOW BE IT REMEMBERED that on the day first above mentd the sd B. came before me, the sd X., [deputy] steward of the sd manor out of court, and prayed to be admitted tenant to the sd hereds so surrendered to his use as afsd, of which sd hereds the lord of the sd manor, by me the sd X., granted seisin by the rod, To HOLD the same UNTO the sd B. and his hrs at the will of the lord according to the custom of the sd manor, by and under the rents, fines, [heriots], suits, and services, due and of right accustomed for the same: AND so, saving the right of the lord and the right of all psons interested in the equity of redemption of the sd hereds and premes, the sd B. is admitted tenant of the same, and pays to the lord on such his admittance a fine certain of £—, and his fealty is respited.

State of mortgage debt.
Memorandum of admittance.

LVIII.

CONDITIONAL SURRENDER of COPYHOLDS by MORTGAGOR to TRANSFEREE of mortgage. VARIATIONS where the SURRENDER is made by a MORTGAGEE who has been admitted.

PREC.
LVIII.
—

Manor of — }
County of — } BE IT REMEMBERED that on the
— day of —, A., *mortgagor*, [B., *mortgagee*] of, &c., a customary tenant of the sd manor, came before me, X., [deputy] steward of the sd manor, and in conson of the sum of £— paid by C., *transferee*, of —, to B., of, &c., by the direction of the sd A., [to the sd B.] in satisfon of all principal monies and interest secured to the sd B. by a conditional surrender, dated, &c., of the copyhd hereds hinafter mentd, [to which sd hereds the sd A. [B.] was admitted on the — day of —] did out of court surrender, &c., as in *Precedent III.*, p. 77, where the surrender is by the mortgagee, instead of the words, “and also subjt to a condon, &c.,” say, “SUBJT to such equity of redemption as is now subsisting in the sd premes by virtue of the asfd conditional surrender of the — day of —.”

LIX.

STATUTORY TRANSFER of MORTGAGE of FREEHOLDS PREC. LIX.
or LEASEHOLDS under the 27th section of the CON-
VEYANCING ACT, 1881, the mortgagor NOT joining.
VARIATIONS for a mortgage to TRUSTEES (a).

(a) This Precedent and the two which follow are in the forms given in the As to the Conv. Act, 1881, schedule III. part 2, which, in addition to their ordinary statutory

PREC. LIX.

THIS INDRE, made by way of statutory transfer of mtge the — day of — 18—, BETWEEN A., [B. & C.] *mortgagees*, of the one pt, and D., [E. & F.] *transferees*, of the other pt, supplemental to an indre made by way of statutory mtge dated the — day of —, 18—, and made between, &c., WITNETH, that in conson of the sum of £—, now paid to A., [B. & C.] by D., [E. & F. out of monies belonging to them on a joint account] being the aggregate amount of £—, mtge-money, and £—, interest due in respect of the sd mtge, of which sum A., [B. & C.] hby acknowledge[s] the receipt, A., [B. & C.] as mtgee[s] hby convey[s] and transfer[s] to D., [E. & F.] the benefit of the sd mtge.

IN WITNESS, &c. (b).

LX.

PREC. LX.

STATUTORY TRANSFER of MORTGAGE of FREEHOLDS and LEASEHOLDS under the 27th section of the

forms of
transfers of
mortgage.

operation as implying covenants against incumbrances or for title, as the case may be, and any other clauses under the general provisions of the Act, have also a special operation as defined by ss. 27 & 28. The forms can only be used where the original mortgage was a "statutory mortgage" under s. 26, (as to which, see p. 81), and therefore have only a limited operation; and they apply only to freeholds and leaseholds. Each of the three forms operates as a transfer of the mortgage debt and the mortgaged property: the second form also operates as a covenant for payment by the person joining as covenantor, or by each of such persons jointly and severally if more than one; and the third form operates not only as a "statutory transfer," but also as a "statutory mortgage," so as to have effect accordingly under s. 26; but not so as to be liable to any increased stamp duty by reason only of its being designated a mortgage; as to which, see p. 216, note. These statutory forms may be varied or added to as circumstances require, see s. 27. The forms are expressed as "supplemental" to the mortgage, but may be varied so as to be made by endorsement. See the schedule, Part 2 (C.).

(b) Notice to be given to the mortgagor.

CONVEYANCING ACT, 1881, *the MORTGAGOR or* PREC. LX.
 OTHER PERSON *joining to COVENANT for PAY-*
 MENT (a).

THIS INDRE, made by way of statutory transfer of mtge the — day of —, 18—, BETWEEN A., [B. & C.] *mortgagees*, of the first pt, D., *covenantor*, of the second pt, and E., [F. & G.] *transferees*, of the third pt, supplemental to an indre made by way of statutory mtge, dated the — day of —, 18—, and made between, &c., WITNETH that in conson of the sum of £—, now paid to A., [B. & C.] by E. [F. & G. out of monies belonging to them on a joint account] being the mtge-money due in respect of the sd mtge, no interest being now due and payable thereon, of which sum A., [B. & C.] hby acknowledge[s] the receipt, A., [B. & C.] as mtgee[s], with the concurrence of D., who joins herein as covenantor, hby convey[s] and transfer[s] to E. [F. & G.] the benefit of the sd mtge.

IN WITNESS, &c. (b).

LXI.

STATUTORY TRANSFER *and* STATUTORY MORTGAGE PREC. LXI.
combined under the 27th section of the CONVEYANC-
 ING ACT, 1881 (a).

THIS INDRE, made by way of statutory transfer of mtge and statutory mtge the — day of —, 18—, BETWEEN A., [B. & C.] *mortgagees*, of the first pt, D., *mortgagor*, of the second pt, and E. [F. & G.], *transferees*, of the third pt, supplemental to an indre made

(a) See p. 227, note.

(b) Notice to be given to the mortgagor if not a party.

PREC. LXI. by way of statutory mtge dated the — day of —, 18—, and made between, &c.; WHAS the principal sum of £— only remains due in respect of the sd mtge as the mtge-money, and no interest is now due and payable thereon; AND WHAS D. is seised in fee simple of the land comprd in the sd mtge subj to that mtge; NOW THIS INDRE WITNETH that in conson of the sum of £— now paid to A., [B. & C.] by E., [F. & G. out of monies belonging to them on a joint account] of which sum A., [B. & C.] hby acknowledge[s] the rect, and D. hby acknowledges the paymt and rect as afsd (b), A., [B. & C.] as mtgee[s], hby convey[s] and transfer[s] to E., [F. & G.] the benefit of the sd mtge; AND THIS INDRE ALSO WITNETH that for the same conson, A., [B. & C.] as mtgee[s] and according to his [their] este and by direction of D., hby convey[s] and D., as beneficial owner, hby conveys and confirms to E. [F. & G.] ALL THAT, &c., TO HOLD TO AND TO THE USE of E. [F. & G.] in fee simple for securing paymt on the — day of —, 18—, of (c) the sum of £— as the mtge-money, with interest thereon at the rate of — per cent. per annum.

IN WITNESS, &c.

LXII.

PREC. LXII.

TRANSFER of a MORTGAGE of FREEHOLDS, the mortgagor receiving a FURTHER ADVANCE and bringing ADDITIONAL FREEHOLDS into mortgage.

(b) In case of a further advance, insert here, “and also in conson of the further sum of £— now paid by E. [F. & G. out of monies belonging, &c.,] to D. of which sum D. hby acknowledges the rect.”

(c) In case of a further advance, insert here, “the sums of £— & £—, making together.”

PARTIES, A., mortgagee, 1; B., mortgagor, 2; C., trans- feree, 3; Recite the mortgage as in Precedent LV.; State of mortgage debt, all interest having been paid, p. 5; Title of B. to the additional freeholds: AND WHAS the sd C. has agrd, at the request of the sd B., to pay to the sd A. the sd sum of £—, and to lend to the sd B. the further sum of £—, upon having such transfer as is hinafter contd of the sd mtge debt of £— and interest, and the secs for the same, and upon having the repaymt of the sd sums of £— and £—, making an aggregate principal sum of £—, with interest at the rate hinafter mentd, secured and further secured resply in mnner hinafter appearing; NOW THIS INDRE WITNETH that in psuance of the recited agreemt and in conson of the sum of £—, the original mortgage debt, now paid by the sd C. to the sd A., receipt by A., and of the sum of £—, the further advance, now paid by the sd C. to the sd B., the paymt and rect resply of which sums of £— and £—, making the aggregate sum of £—, the sd B. doth hby acknowledge, Assignment by A. of mortgage debt and securities, p. 216; Further testatum covenant by B. for payment of aggregate debt, p. 9; and interest after default, p. 10; Further testatum, the sd A., as mtgee (a), at the request of the sd B., so far only as regards the hereds first hinafter described and expd to be hby granted, doth hby grant, and the sd B., as beneficial owner (a), as to all the hereds hinafter described and expd to be hby granted, doth hby grant and confirm unto the sd C., his hrs and assigns: First, the freeholds in original mortgage, by reference, as in Precedent LIV.; Secondly, the additional freeholds, omitting general words and estate clause, see Vol. I., pp. 857, 859, notes; Habendum to C. in fee, Freed and discharged as regards the premes first hinbefore described and hby granted from all right or equity of redemption under or by virtue of the hinbefore recited indre of mtge, but subjt as

PREC. LXII.

Recitals.

Agreement.

Witnesseth.

Assignment of mortgage debt.

Further witnesseth.

Grant.

(a) See p. 222, note.

PREC. LXII. regards all the premes hby granted to the provo for redemption hinafter contd, *Proviso for redemption on payment of aggregate loan and interest*, p. 17 ; *Proviso (if any) in mortgage for reduction of interest to extend to new advance*, p. 208 ; [*Powers in original mortgage to extend to new advance*, p. 206, *mutatis mutandis* ; *Power of sale as to new freeholds*, p. 22 (a)] ; *Insurance clause (if any) in mortgage to extend to new freeholds*, p. 207, or if none insert the clause, if required, p. 44 ; *Mortgagee's indemnity clause*, p. 61.

IN WITNESS, &c.

LXIII.

**PREC.
LXIII.**

TRANSFER by ENDORSEMENT of MORTGAGE of FREEHOLDS, LEASEHOLDS, AND COPYHOLDS, the MORTGAGOR NOT being a PARTY (b), where the MORTGAGEES are TRUSTEES and the TRUST is NOT DISCLOSED, the TRANSFER being made on the APPOINTMENT of NEW TRUSTEES. VARIATIONS where there is a CONTINUING TRUSTEE (c).

Recitals. *PARTIES, A. and B., trustees and mortgagees, 1 ; C., D., and E., new trustees and transferees, 2 ; Recite state of*

(a) Or the statutory power of sale, (as to which, see p. 22, note), which would apply without express incorporation, may be relied on. If thought desirable, a new power of sale, extending to all the property, may be inserted, in which case the clauses in this bracket will be omitted, and the clause in p. 220, note (c), *mutatis mutandis*, added.

(b) The mortgagor is not usually made a party in this case.

**Variations
for con-
tinuing
trustee.**

(c) If there is a continuing trustee, the parties will be A., *retiring trustee*, and B., *continuing trustee*, 1 ; B., and C. and D., *new trustees*, 2 ; the mortgage debt will be assigned by A. and B. "as mtgees" to B., C., and D., with a power of attorney (if deemed expedient, see p. 112, note), to B., C., and D., to use the names of A. and B. ; the freeholds will be conveyed by A. au

mortgage debt, p. 5: AND WHAS the sd C., D., and E. have become entled in equity to the sd principal sum of £—— and the interest now due and henceforth to become due for the same: AND WHAS the sd A. and B. have agrd, at the request of the sd C., D., and E., to execute such transfer of the sd principal sum of £—— and interest and the secs for the same as is hinafter contd. *The operative clauses will be similar to those in Precedent LIV., with the variations for an endorsed deed indicated in p. 202, note, and except that the consideration will be, "in conson of the premes."*

PREC.
LXIII.

Title of
transferees.
Agree-
ment.

IN WITNESS, &c. (d).

LXIV.

TRANSFER of MORTGAGE of a REVERSIONARY INTEREST in PERSONALTY and POLICY of ASSURANCE on the mortgagor's life, the mortgagor receiving a FURTHER ADVANCE, and extending the security to FUTURE ADVANCES, with provisions for CAPITALIZING

PREC.
LXIV.

B. "as mtgees" to "C. and D., and their hrs, To THE USE of B., C., and D., their hrs and assigns;" and the leaseholds will be assigned by A. and B. "as mtgees" to "B., C., and D., their exs, ads, and assigns;" and A. and B. "as mtgees" will covenant with C. and D. to surrender the copyholds to the use of B., C., and D. In the covenant against incumbrances which is implied by the Conv. Act, 1881, s. 7, in this case (see p. 216, note), B., the continuing trustee, is both a covenantor and covenantee (see Vol. I., p. 108); but this is not of any practical importance; under the old practice the express covenant would have been by A. and B. with C. and D. The 34th section of the Conv. Act, 1881, enabling the trust estate to be transferred on an appointment of new trustees by the declaration of the appointor, does not apply to mortgages, see Vol. I., p. 106, note. See the Precedent of an appointment of a new trustee, where the trust funds are invested on mortgage, in Vol. I., p. 114, and as to the mode of conveying the trust estate, see Vol. I., pp. 114, 134, notes.

As to the stamp on the transfer of a mortgage on the appointment of new trustees, see the Stamp Act, 1870, s. 78, 2 Dav. Prec., part 2, p. 806, note.

(d) Notice to be given to the mortgagor.

PRBO.
 LXIV.
 —

INTEREST in arrear and charging COMPOUND
 INTEREST.

Recitals.

Agree-
 ment.

Wit-
 nesseth.

Assign-
 ment of
 mortgage
 debt.

Further
 witnesseth.

PARTIES, A., mortgagee, 1; B., mortgagor, 2; C., transferee, 3; Recite title of B. to reversionary share in the funds comprised in his parents' marriage settlement subject to their life interests; and to a policy on his life, p. 8; Mortgage to A., p. 4, mutatis mutandis, setting out also the declaration of trust (if any) of monies to be received by the mortgagee; State of mortgage debt, no interest being due, p. 5: AND WHAS the sd C. has agrd at the request of the sd B. to pay to the sd A. the sd sum of £—, and to advance to the sd B. the further sum of £—, making an aggregate sum of £—, upon having such transfer of the sd mtge debt of £— and the interest henceforth to become due in respect thof and the secs for the same as is hinafter contd, and upon having the sd aggregate debt of £—, with any future advances which he the sd C. may hereafter make to the sd B., with interest at the rate hinafter mentd, secured in mner hinafter appearing; And it has been further agrd that such arrangemt as is hinafter contd shall be entered into with respect to the capitalizing of interest in arrear, and charging interest in the nature of compound interest: NOW THIS INDRE WITNETH that in psuance of the recited agreemt, consideration and receipt as in Precedent LVII., p. 230, Assignment by A., at request of B. to C. of the mortgage debt and securities as in Precedent LV., with the addition of the clause in note (c) to that Precedent, p. 220; Further testatum, Covenant by B. with C. for payment of aggregate debt and interest on next day for payment of interest, and future advances, p. 10; and interest after default, p. 11; AND THIS INDRE ALSO WITNETH that in further psuance of the sd agreemt and for the consons afsd the sd A., as mtgee (a), at the request of the sd B., doth hby assign and transfer, and the sd B.,

(a) See p. 222, note.

as beneficial owner (a), doth hby assign and confirm unto the sd C., his exs, ads, and assigns, ALL THE pt, share, and interest assigned by the hinbefore recited indre of mtge of and in the trust monies, stocks, funds, and secs therein mentd and of and in the dividends, interest, and annual produce thof: AND ALSO the policy of assurance and monies comprd in or mtged by the same indre: AND ALL other the premes therein compd or thereby assigned: [AND ALL and singular other, if any, the pts, shares, and interests whatsoever to which the sd B. is or may become entled of and in the sd trust monies, stocks, funds, secs, and premes or any pt thof, or of and in the dividends, interest, and annual produce thof]; AND THE full benefit of the powers and provons in the sd indre of mtge contd with respect to the recovery, rect, or obtaining possion of and giving rects and discharges for the sd mtged premes or otherwise in relation thto: To HOLD the sd premes lastly hby assigned UNTO the sd C., his exs, ads, and assigns, discharged from all equity of redemption under the sd indre of mtge, but subjt to the provo for redemption hinafter contd, *Proviso for redemption, p. 19, on payment of aggregate debt and future advances and interest; Add if desired new covenants by B. with C. to keep up the policy, p. 42, and a new power of sale, p. 28, or, clause incorporating the statutory power, see Precedent LV., p. 223, with proviso keeping alive the old power, p. 32, extended to future advances; or add agreement that powers in original mortgage shall extend to new and future advances, p. 220, mutatis mutandis: PROVD ALWAYS and it is hby agrd that in case any half-yearly or other paymt of interest upon the monies for the time being owing on this secy (inclusive of any further sum which may be advanced or paid or become owing as afsd, and of any interest which may be added to principal by virtue of this present provo), or any pt thof respby, shall remain unpaid for — days after the same shall become due, the interest so in arrear shall be added to the principal monies for the time being owing on this secy, and bear interest after the rate afsd from the*

PREC.
LXIV.

Assign-
ment of
reversion
and policy.

Haben-
dum.

Proviso for
capitaliza-
tion of in-
terest.

PREC. LXIV. half-yearly day when the same became due in the same mner as if the interest so in arrear were a further advance made by the sd C., his exs, ads, or assigns, to the sd B., his exs, ads, or assigns, on such day, so that the amount of the principal monies hby secured may accumulate to the extent of the interest which may remain in arrear as afsd in the way of compound interest by the half-yearly addition of interest, and the covenant on the pt of the sd B. hinbfore contd for the paymt of the principal monies and interest hby secured shall extend to all additions to the sd principal monies arising from such capitalized interest and the interest to accrue due thereon, and the sd mtged premes shall stand charged thwith accordingly; [AND IT IS HBY agrd that for the sake of convenience any further advance by the sd C. to the sd A. (other than paymts made for keeping up or renewing the sd policy), shall be made on the half-yearly days hinbfore appointed for the paymt of interest under this secy, and shall be in sums of not less than £—— at any one time]: **PROVD ALWAYS** that nothing herein contd shall in anywise be deemed to render it obligatory on the sd C., his exs, ads, or assigns, to make any further advance or paymt to or on account of the sd B., his hrs, exs, ads, or assigns: *Mortgagee's indemnity clause, p. 61.*

Advances
to be made
on days ap-
pointed for
payment of
interest.

Transferee
not to be
bound to
make ad-
vances.

IN WITNESS, &c. (b).

LXV.

PREC. LXV. *TRANSFER of MORTGAGE of FREEHOLDS PREPARATORY to a CONSOLIDATION DEED (c).*

(b) Notice to be given to the trustees of the reversionary interest, and the insurance office.

(c) This might conveniently be done by endorsed or supplemental deed, see p. 215, note.

PARTIES, A., mortgagee, 1; B., mortgagor, 2; C., transferee, 3; Recite the mortgage stating the covenant for payment, the grant setting out the parcels fully, and the proviso for redemption, and any provisions, such as for reduction of interest on punctual payment, which alter the primary agreement, p. 4; State of mortgage debt, all interest having been paid, p. 5; Agreement for transfer, p. 6, form XVI.: NOW THIS INDRE WITNETH that in psuance of the recited agreemt, Consideration, p. 8, transfer of the mortgage debt and future interest with the benefit of the power of sale and other securities as in Precedent LV.: AND THIS INDRE ALSO WITNETH, &c., Grant by A. at request of B. of freeholds to C., subject to redemption, &c., as in Precedent LV.

IN WITNESS, &c.

LXVI.

DEED CONSOLIDATING *several MORTGAGES transferred to a person who pays them off.* VARIATION *where a FURTHER ADVANCE is made to the Mortgagor.*

PARTIES, A., mortgagor, 1; B., transferee, 2. WHAS the sd A. is seised or entled for an este in fee simple in possion to the — and hereds first and secondly hinafter described and hby granted, subjt as to the hereds first hinafter described to a mtge debt of £—— and interest secured by an indre of mtge dated the — day of —, and subjt as to all the sd hereds hinafter described to a mtge debt of £—— and

(a) Where there are several prior mortgages, the short particulars of them, and the transfers to the present mortgagee may very conveniently be given in a schedule; in which case this recital of the mortgagor's title and the subsequent recital of the transfers will be much shortened by referring to the schedule.

PREC. interest secured by an indre of mtge dated, &c., being a
 LXVI. mtge for securing the sum of £—— and interest, and such
 further advances as are therein mentd, but all interest on
 the sd several principal sums of £—— and £—— has been
 paid up to the day of the date of these presents: AND WHAS
 Agreement for loan. the sd B. has agrd to lend to the sd A. the sum of £——,
the total sum now advanced, upon having the repaymt of the
 same secured in mner hinafter appearing: AND WHAS upon
 Agreement for trans- the treaty for the sd loan it was agrd that the sd several
 fer. mtge debts of £—— and £——, making togr £——, should
 be paid off out of the sd sum of £——, *the total sum now
 advanced*, and that the sd several mtge debts and interest,
 and the secs for the same, should be transferred to the sd
 Transfer. B. in mner hinafter mentd: AND WHAS in pt performance of
 the sd agreemt by an indre bearing date the day before the
 date of these presents, and expd to be made between C. of
 the first pt, the sd A. of the second pt, and the sd B. of the
 third pt, after recitals by which it appeared that the sd mtge
 debt of £——, and the secs for the same, were then vested
 in the sd C., but that all interest on the sd sum of £—— had
 been paid up to the date of the indre now in recital, *formal
 recital of transfer of mortgage debt of £—— and securities*,
 Vol. I., p. 323, *the transfer being taken in the form given in the
 last Precedent; similar recital of transfer of the other mort-
 gage debt and securities*: NOW THIS INDRE WITNETH
 Wit- that in further psuance of the recited agreemt and in conson
 nesseth. of the several sums of £—— and £—— paid to the sd C.
 and D. resply by the sd B., at the request of the sd A., in
 mner afsd [and of the further sum of £—— now paid to the
 sd A. by the sd B.], the paymt and rect in mner afsd of
 which sd sums of £—— and £—— [and £——], making
 togr the sd sum of £——, the sd A. doth hby acknowledge,
 Covenant by A. for payment of total sum and interest, p. 9;
 and interest after default, p. 10: AND THIS INDRE
 ALSO WITNETH that in further psuance of the recited
 Further agreemts and for the conson afsd the sd A. as beneficial
 witnesseth. owner (*see* p. 64, *note*) doth hby grant and confirm unto
 Grant.

the sd B., his hrs and assigns, First, *parcels from first recited mortgage*. And secondly, *other parcels in secondly recited mortgage; omitting general words and estate clause, see Vol. I., pp. 357, 359, notes*: To HOLD all the sd premes hby granted UNTO AND TO THE USE of the sd B., his hrs and assigns, subjt to the sd secs for the sd several mtge debts of £—— and £——, which with such secs have been transferred to the sd B. as afsd, and so that all the same secs, including the respive powers of sale therein contd, shall continue on foot for the benefit of the sd B., his exs, ads, and assigns, and for securing to him or them the whole of the sd principal sum of £——, *the total advance*, intd to be hby secured, and the interest thereon: And accordingly that the mtges effected by the sd several indres of, &c., resply, for securing the sd several sums of £—— and £—— and interest, shall be discharged from the respive provoes for redemption therein contd, and from the other provons, if any, thof which may be inconsistent with the provons of these presents, but so nevertheless that all the sd premes hby granted shall be subjt to the provo for redemption hinafter contd; *Proviso for redemption on payment of aggregate sum and interest, p. 17; Covenant to insure and repair if appropriate, p. 44; Power of sale, p. 22, or clause incorporating statutory powers of sale, insurance, and appointing receivers as in Precedent LV., p. 228, adding Covenant supplemental to statutory provisions for insurance, p. 46; Mortgagee's indemnity clause, p. 61.*

PREC.

LXVI.

Parcels.

Haben-
dum.To the use
of trans-
feree, so
as to keep
alive the
old securi-
ties.

IN WITNESS, &c.

LXVII.

PREC.
LXVII.

TRANSFER of a MORTGAGE to a TRUSTEE so as to keep it on foot for the benefit of a TENANT FOR LIFE who pays it off, PART of the property having already been RECONVEYED (a).

Recitals.	<i>PARTIES</i> , A., mortgagee, 1; B., tenant for life, 2; C., trustee, 3. <i>Recite mortgage</i> , p. 4; <i>Settlement of equity of redemption under which B. is tenant for life</i> , Vol. I., p. 324; <i>Reconveyance of part of the hereditaments</i> ; <i>State of mortgage debt</i> , p. 5; AND WHAS the sd B. is desirous of paying off the sd mtge debt, and of having the same assigned to the sd C. as a tree for him the sd B., so as to keep the same on foot as a subsisting charge on the hereds remaining subj thto, and the sd A. has at his request agrd to accept paymt of the sd principal sum, and to execute such transfer accordingly: NOW THIS INDRE WITNETH that in psuance of the recited agreemt, <i>consideration, receipt</i> , the sd A., as mtgee (<i>see</i> p. 216, <i>note</i>) at the request of the sd B., doth hby assign and transfer unto the sd C., his exs, ads, and assigns THE SD principal sum of £——, with the interest henceforth to accrue due thereon, and the full benefit of every covenant and provon contd in the sd indre of mtge, and all other secs for the same; To HOLD the same UNTO the sd C., his exs, ads, and assigns, IN TRUST for the sd B., his exs, ads, and assigns, as his and their own monies, and to be assigned and disposed of as he or they shall direct, and in the meantime to be kept on foot as a subsisting charge for his and their benefit upon the hereds subj thto: AND
Agreement.	
Witnesseth.	
Assignment. Mortgage debt.	
Haben- dum.	
To trustee.	
In trust for tenant for life.	
Further witnesseth.	
Grant. Parcels.	

THIS INDRE ALSO WITNETH that in further psuance of the recited agreemt, and in conson of the premes, the sd A., as mtgee at the request of the sd B., doth hby grant unto the sd C., his hrs and assigns, ALL AND SINGULAR, the messuages, lands, tenemts, hereds, and premes, compd in and assured by the hinbefore recited indre of mtge of, &c.,

(a) Compare the Precedent of an assignment of a legacy to a trustee for the tenant for life, Vol. I., p. 548.

save and except such pt or pts thof as were conveyed and reled by the hinbefore recited indre of the — day of —, AND (by way of conveyance and not of exception) all other, if any, the hereds now remaining vested in the sd A., subj to redemption under or by virtue of the sd indre of mtge, *omitting general words and estate clause*, To HOLD the same hereds and premes UNTO AND TO THE USE of the sd C., his hrs and assigns, NEVERTHELESS IN TRUST for the sd B., his exs, ads, and assigns, and to be conveyed and disposed of as he or they shall direct, but subj to the equity of redemption subsisting in the same premes upon paymt of the sd sum of £—— and the interest thof.

PREC.
LXVII.
—

Habendum.
To use of trustee in fee upon trust for tenant for life.

IN WITNESS, &c.

LXVIII.

TRANSFER *without the CONCURRENCE of the MORTGAGOR of an EQUITABLE MORTGAGE created by deposit of DEEDS and AGREEMENT (a). A short form by endorsement.*

PREC.
LXVIII.
—

I, the within-named A., *mortgagee*, do hby assign unto B., *transferee*, of, &c., the within-mentd sum of £——, with the interest thereon, as from the — day of — last, and henceforth to become due, TOGR WITH the within-mentd deeds and writings, AND WITH the benefit of the charge and undertaking by the within-named C., *mortgagor*, in the within-written memorandum contd: AND I undertake that I, my exs, or ads, will, if required, execute and deliver to the sd B., his exs, ads, or assigns, at his or their cost, such formal and effectual transfer by deed of the above-mentd principal sum and interest, and the secs for the same, in such form and with such provons as may be reasonably required.

As WITNESS my hand this — day of — (b).

(a) See Prec. XLII., p. 189.

(b) Notice to be given to the mortgagor.

LXIX.

PREC.
LXIX.

RECONVEYANCE by MORTGAGEE in FEE of FREEHOLDS, by ENDORSEMENT on or ANNEXATION to the Mortgage. VARIATIONS for a Mortgage to TRUSTEES, and where RECITALS are OMITTED (b).

Recitals.	<i>PART I, A. [B. and C.], mortgagees, 1; D., mort-</i>
Intention to pay off.	<i>gagor, 2: [(c) Recite state of mortgage debt, all interest being</i> <i>paid, p. 5: AND WHAS the sd D. is desirous of paying off</i>
Variation.	<i>the sd principal sum of £——, and of having the within</i> <i>mentd hereds and premes released and reconveyed in mner</i> <i>hinafter expd; or, "WHAS all principal monies and interest</i> <i>which were at any time owing on the the secy of the within</i> <i>written indre have been fully paid off and discharged, as</i> <i>the said A. doth [A., B., and C. do] hby admit, and the</i> <i>sd D. is desirous of having the within mentd hereds and</i> <i>premes released and reconveyed in mner hinafter expd":</i>

As to endorsing or annexing reconveyance. (b) As to reconveyances, see 2 Dav. Prec., part 2, pp. 276 *et seq.*; Elph. Introd. Conv., 237. If there has been a transfer, the reconveyance should be endorsed on the transfer; if endorsement is not convenient, recitals may be saved by making it supplemental or annexed to the mortgage or transfer, as in the case of a further charge, see p. 202, note, where the variations required in that case are indicated.

As to statutory form of reconveyance. The Conv. Act, 1881, contains, in the 3rd Schedule, part III., a short form of reconveyance (see *infra*, p. 251), which may be used for freeholds or leaseholds, where the mortgage was in the statutory form given in that schedule; and may be varied or added to as circumstances require; see s. 29. As to the use of the statutory forms, see p. 81, note; p. 227, note.

As to the stamp on a reconveyance, see the Stamp Act, 1870, sched. tit. "MORTGAGE"; 2 Dav. Prec., pt. 2, p. 301, note.

(c) If the deed is framed without recitals, substitute for the words in this bracket the words, "WITNETH that in conson of all interest on the within mentd sum of £—— having been paid up to the date of these presents and of the."

NOW THIS INDRE WITNETH that in conson of all interest on the sd sum of £—— having been paid as afsd, and of the] sum of £—— now paid by the sd D. to the sd A. [B., and C.], the rect whof is hby acknowledged [*add, if desired,* as being in full discharge of all principal monies and interest secured by, or now owing under the within written indre], [*or, if the repayment of the mortgage money is recited, say,* in conson of the premes], the sd A. as mortgagee (d) doth [A., B., and C., as mortgagees do] hby grant and release unto the sd D., his hrs and assigns, Grant. ALL AND SINGULAR the hereds and premes comprd in or assured by the within written indre, or which are now by any means (e) vested in the sd A. [B., and C.] subjt to redemption by virtue of the same indre, *omitting general words and estate clause, see Vol. I., pp. 357, 359, notes,* To HOLD the said hereds and premes UNTO AND TO THE USE of the sd D., his hrs and assigns [subjt to the leases, agreemts for leases and tenancies affecting the sd respive premes, but] discharged from the within mentd sum of £——, and the interest thereon, and all monies now or at any time heretofore owing on the secy of, and from all charges, claims, and demands under the within written indre, or otherwise howsoever.

IN WITNESS, &c.

(d) This implies a covenant against incumbrances by the mortgagee or mortgagees (each as to his own acts only), see p. 64, note.

(e) If the mortgage is an old one and there may have been accretions to the property arising from enclosures, &c., say, "or which are now by means of any enclosure, exchange, allotment, award, or otherwise vested, &c."

LXX.

PREC. LXX

RELEASE of COPYHOLDS held of two manors from
CHARGES created by CONDITIONAL SURRENDER,
and by COVENANT to SURRENDER.

PARTIES, A., B., and C., first mortgagees, 1 ; D., E., and F., second mortgagees, 2 ; G. and H., trustees of mortgagor's will, 3. Recite first mortgage by covenant to surrender, Vol. I., p. 321 ; and conditional surrender pursuant thereto, p. 5 ;

Second mortgage by covenant to surrender: AND WHAS NO surrender has ever been made in pursuance of the covenant contd in the lastly hinbefore recited indre ; Will of X., mortgagor, devising his real estate to G. and H. in trust, and appointing exors, death and probate, Vol. I., p. 327 ; State of mortgage debts all interest paid, p. 5 : AND WHAS the sd G. and H., as such trees as aforesd, are desirous of paying off the sd sums of £—— and £—— : AND WHAS satisfon of the sd conditional surrender to the sd A., B., and C. is intended to be forthwith entered on the Court rolls of the respive manors of which the sd copyhd hereds are held :

NOW THIS INDRE WITNETH that in conson of the sum of £—— now paid by the sd G. and H. to the sd A., B., and C., and also in conson of the sum of £—— now paid by the sd G. and H. to the sd D., E., and F., in full satisfon of all monies remaining due to the sd A., B., and C., and the sd D., E., and F. resply, on the secy of the sd hinbefore recited indres of mtge resply (the rect, &c.), the sd A., B., and C., as mtgees (see p. 64, note) and the sd D., E., and F., as mtgees, do resply hby release unto the sd G. and H. as such trees as aforesd, their hrs and assigns : ALL AND SINGULAR the customary or copyhd hereds and premes comprd in the sd respive hinbefore recited mtge secs, omitting general words and estate clause, see Vol. I., pp. 357, 359, notes, Habendum, UNTO AND TO THE USE of the sd G. and H., their hrs and assigns, to the intent that the sd G. and H., their hrs and assigns, may henceforth

Recitals.

No surren- der made.

Intention to pay off.

Satisfac- tion to be entered up.

Wit- nesseth.

Release.

Parcels.

Haben- dum to use of trustees.

hold the sd premes, UPON SUCH TRUSTS as are by the sd PREC. LXX.
will of the sd X., deceased, expd concerning the hereds Upon
thby devised, or such of the same trusts as are now subsist- trusts of
ing and capable of taking effect, Discharged from all claims will.
and demands of the sd A., B., and C., and the sd D., E., Free from
and F., resply, or any of them, by virtue of the sd mortgages.
respive hinbefore recited secs, or otherwise howsoever.

IN WITNESS, &c.

LXXI.

WARRANT *to enter up* SATISFACTION *on a* CONDITIONAL
SURRENDER.

PREC.
LXXI.

Manor of — } I, A., *mortgagee*, of —, do hby admit
County of — } that I have received all principal monies
and interest, the paymt whof was secured to me by a con-
ditional surrender dated the — day of — by B., *mort-*
gagor, of, &c., of certain copyhd, or customary hereds,
situate, &c., held of the sd manor; and I authorise and
direct the steward of the sd manor to enter satisfon of the
sd conditional surrender on the rolls of the sd manor,
and for so doing this shall be his sufficient warrant and
authority.

Dated this — day of —.

(Signed) A.

LXXII.

RECONVEVANCE *by* INDEPENDENT DEED (a) *by*
several MORTGAGEES (TRUSTEES) *of* FREEHOLDS *to*

PREC.
LXXII.

(a) The reconveyance might be endorsed on, or made supplemental to the transfer, see p. 242, note; in which case the recitals up to and including the transfer would be omitted.

PREC.
LXXII.

the HEIR or DEVISEE of the mortgagor, there having been a FURTHER CHARGE and a TRANSFER of the Original Mortgage. VARIATIONS for PART of the property having been SOLD with the CONCURRENCE of the MORTGAGEES, and where the PRINCIPAL has been paid off by INSTALMENTS, and for a RECONVEYANCE to the USES of a settlement or will.

Recitals.

Sale of
part of
land.

Death of
mortgagor,
and devo-
lution of
equity of
redemption.

PARTIES, A., B., and C., mortgagees, 1; D., heir or devisee of mortgagor, or, D. and E., trustees of will or settlement, and grantees to uses, 2. Recite mortgage by K. to X., stating the conveyance and proviso for redemption, and setting out the parcels at length, Vol. I., p. 320; Further charge, Vol. I., p. 323; Transfer, stating the assignment of the debt, the conveyance of the estate, and the new proviso for redemption (if any), and if any of the transferees have died, the joint account clause (if any) Vol. I., p. 323; [Where part of the property has been sold, say, "AND WHAS the sd K., with the privity of the sd A., B., and C., in the year — sold a portion of the hereds comprd in the sd indres, of, &c., the mortgage, further charge and transfer, consisting of a piece of land containing — acres, situate, &c., to Y., and in the year —, with the like privity, sold a further portion thof consisting of, &c., to Z., and on the completion of the sd several sales, the sd A., B., and C. joined in the several conveyances of the same lands and hereds to the respive pchasers thof, but the pchase monies payable for the same were received by the sd K., except as to £——, which was paid to and received by the sd A., B., and C., in pt discharge of the principal sum of £—— secured by the sd indres of, &c., the mortgage, further charge and transfer, whby the same was reduced to £——]: AND WHAS the sd K. died on the — day of — intestate, leaving the sd D. his eldest son and heir at law, who thereupon became entled to the equity of redemption of the sd mtged premes [other than the pts thof so sold as afsd]; or recite will of K., setting out the devise of the equity of redemption to D., or in strict settle-

ment, D. and E. being the trustees; death and probate; or recite strict settlement, D. and E. being the trustees; [(b) State of mortgage debt, p. 5, form XII.: AND WHAS the sd D. has [D. and E. have] agrd to pay off and discharge the sd mtge debt [out of monies in their hands as trees of the sd will, or, "settlemt," applicable for that ppose], and has [have] requested the sd A., B., and C. to release and reconvey the sd hereds and premes in mner hinafter appearing: NOW THIS INDRE WITNETH that in con- PRRC.
LXXII.
Intention
to pay off.
son of the sum of £—— now paid by the sd D. [and E., out of monies in their hands as such trees as afsd.] to the sd A., B., and C., in full discharge of all principal monies and interest owing on the secy of the hinbefore recited indres of, &c., the mortgage, further charge, and transfer, or any of them, the rect whof they the sd A., B., and C., do hby acknowledge] they the sd A., B., and C., as Wit-
nesseth.

(b) Where the principal has been paid off by instalments, the following Variation
may be substituted for the part in this bracket :—"AND WHAS the sd where
money paid
by instal-
ments.
D. has [D. and E. out of monies in their hands as trees
of the sd will [settlemt] applicable for that ppose have]
paid to the said A., B., and C., the several sums of £——
and £—— on the —— day of ——, and —— day of ——,
in pt discharge of the sd mtge debt, and has [have] paid to
them the sum of £——, the balance thof, on the execu-
tion of these presents, And all interest on the principal
monies for the time being owing on the secy of the sd
indres of mtge, further charge, and transfer, up to the date
of these presents, has been fully paid, as they, the said
A., B., and C. do hby acknowledge: AND WHAS the sd
A., B., and C., have agrd, at the request of the sd D. [and
E.], to execute such release and reconveyance as is hinafter
contd: NOW THIS INDRE WITNETH, that in psuance
of the sd agreemt, and in conson of all principal monies
and interest secured by the hinbefore recited indres of
mtge, further charge, and transfer, having been fully paid
and satisfied in mner aforesd."

PREC.
LXXII.
—
Release.
Parcels.

Haben-
dum.

mtgees (*see* p. 64, *note*), do resp'y h'by grant and release unto the sd D., his [D., and E., their] hrs and assigns, ALL AND SINGULAR the hereds and premes comprd in or assured by the hinbefore recited indre, &c., *the transfer*, or which are now [*or, save and except such parts thof as have been sold and conveyed to the respive pchasers thof, as hinbefore mentd, and (by way of conveyance and not bf excep- tion), all other, if any, the hereds which are now*] by any means vested in the sd A., B., and C., or any of them, subj't to redemption under or by virtue of the sd indres of, &c., *the mortgage, further charge, and transfer*, or any of them, *omitting general words and estate clause, see Vol. I., pp. 357, 359, notes, Habendum to D. in fee, subject to leases, &c., if any, discharged from claims under the "mtge, further charge, and transfer, or any of them," as in Prec. LXIX. [or, Habendum, UNTO the sd D. and E., and their hrs, sub- ject, &c., and discharged as above, To THE USES upon the trusts and subj't to the powers and provons by the hinbe- fore recited will of the sd K., or, "indre of settlemt of, &c.," declared, or expd, concerning the sd premes, or such of the same as may be subsisting or capable of taking effect.]*

IN WITNESS, &c.

LXXIII.

PREC.
LXXIII.
—

RECONVEYANCE *by ENDORSEMENT of FREEHOLDS and LEASEHOLDS where the MORTGAGEE and MORTGAGOR have both DIED and the reconveyance is by the PERSONAL REPRESENTATIVES of the mort- gagee to the TRUSTEES of the Will of the mort- gagor. VARIATIONS where the MORTGAGEE died BEFORE 1882, and the reconveyance of the FREE- HOLDS is by the PERSONAL representatives of the*

mortgagee with or without the concurrence of his
HEIR OR DEVISEES (a).

**PREC.
 LXXIII.**

PARTIES, A. and B., legal personal representatives [and devisees] of mortgagee, 1; [C., heir of mortgagee, 2]; D., E., and F., executors of mortgagor, 3; D. and E., trustees of mortgagor, 4. Recite will of H. mortgagee, appointing A. and B. executors [and devising mortgaged estates to them], Death and probate, Vol. I., p. 327; [or death of H. intestate, Vol. I., p. 334, [leaving C., his heir at law,] administration to A. and B.]; Will of K., mortgagor, whereby he devised and bequeathed, "all his real and personal estate, including in such devise and bequest the equity of redemption of the hereditaments and premises comprised in the within written indenture, unto the said D. and E., their heirs, executors, administrators, and assigns, upon the trusts in the said will mentioned, and the said testator thereby appointed the said D., E., and F., his executors"; Death of testator and probate; State of mortgage debt, p. 5; AND WHEREAS the said D. and E., as such trustees as aforesaid, are desirous of paying off the said sum of £—, and having such release and reconveyance

Recitals.

**Intention
 to pay off.**

(a) By the Conv. Act, 1881, s. 30, on the death after 1881 of a sole mortgagee of freeholds or copyholds, or an estate *pur autre vie* limited to the heir, the legal estate vests "notwithstanding any testamentary disposition," like a chattel real, in the personal representatives of the mortgagee, who are therefore the proper persons, not only to receive and give a discharge for the mortgage money, but to reconvey the legal estate. It is conceived that if the mortgagee were to make a specific bequest of the mortgage debt, together with the mortgaged estate, the executor might under this section assent to the bequest so as to vest the legal estate in the legatee without any conveyance.

Reconveyances by personal representatives under Vendor and Purchaser Act, 1874, and Conv. Act, 1881.

If the mortgagee died before 1882, the case would be within the Vendor and Purchaser Act, 1874, s. 4 (which is repealed by the above-mentioned section of the Conv. Act, 1881, but remains in force as to persons who died before 1882), whereby the personal representative is enabled on redemption to reconvey freeholds, or copyholds to which the mortgagee has been admitted, and which is apparently applicable whether the mortgagee died before or after the 7th August, 1874, the date of the commencement of the Act. The effect of this enactment is that either the personal representative or the heir or devisee can reconvey; but it appears advisable where possible to join both in the reconveyance, both to avoid questions as to the Act applying, and to obtain a covenant against incumbrances from both.

PREO. of the sd mtged premes as is hinafter contd : AND WHAS the
 LXXIII. sd D., E., and F., as such exs as afsd, have agrd to join in
 Agreement these presents for the ppose of signifying their assent to
 by exors of the sd bequest of the leasehd premes comprd in the within
 mortgagor written indre : NOW THIS INDRE WITNETH that in
 to join. conson of the sum of £—— upon the execution hereof paid
 Wit- by the sd D. and E. as such trees as afsd out of monies
 nesseth. forming pt of the este of the sd testor to the sd A. and B.,
 the rect whof is hby acknowledged, the sd A. and B. as
 Grant. mtgees (b), do hby grant and release [the sd C. as tree (b) by
 Freeholds. the direction of the sd A. and B., doth hby grant, and the sd
 A. and B. as mtgees (b) do hby grant, release, and confirm],
 unto the sd D. and E., their hrs and assigns, ALL AND SINGU-
 LAR the freehd —— hereds, &c., *Parcels as in Prec. LXIX.,*
 [where the reconveyance is by the personal representatives only,
 under the Vendor and Purchaser Act, 1874, omit the words,
 Habendum “vested in the sd A. and B.”] *Habendum unto and to the use*
 to trustees of D. and E. in fee discharged, &c., as in Prec. LXIX., “UPON
 upon THE TRUSTS, and subjt to the powers and provons in the sd
 trusts. recited will of the sd K., declared and contd of and con-
 cerning the real este thby devised in trust as afsd, or such
 Further of the same as are now subsisting and capable of taking
 witnesseth. effect ” ; AND THIS INDRE ALSO WITNETH that
 for the conson afsd the sd A. and B., as mtgees (b), by the
 direction of the sd D., E., and F. as such exs as afsd, do
 Assign- hby assign [if the mortgage was by demise add, surrender]
 ment. and release unto the sd D. and E., their exs, ads, and
 Leaseholds. assigns, ALL AND SINGULAR the leasehd hereds and premes
 comprd in or assigned [demised] by the within written indre,
 or which are now by any means vested in the sd A. and B.,

(b) A covenant against incumbrances may be implied by making the
 personal representatives convey as such, or as “mtgees”; see the Conv. Act,
 1881, s. 7 (1, F.), Vol. I., p. 366, note; the latter expression being more
 correct, if they join also as devisees of mortgaged estates. The heir if a party
 may convey “as tree” or “as mtgee” for the same purpose, the
 former expression being more appropriate.

subjt to redemption by virtue of the same indre, *omitting general words, and estate clause, see Vol. I., pp. 357, 359, notes*: [for a mortgage by assignment say, To HOLD the sd premes hby assigned UNTO the sd D. and E., their exs, ads, and assigns, for all the residue now unexpired of the term of years granted by and subjt to the rent and covenants by the lessee reserved by and contd in the within recited indre of lease] [for a mortgage by demise omit the words in the preceding bracket and say, to the intent that the term of years granted by the within written indre may merge in the term of years granted by the within recited indre of lease and become extinguished, and that the sd premes may henceforth be held by the sd D. and E., their exs, ads, and assigns,] discharged, &c., *as above, upon the trusts, &c., declared by the will, "concerning the leasehd premes thby bequeathed in trust as afsd," as above.*

PREC.
LXXIII.

Habendum
to trustees.

IN WITNESS, &c.

LXXIV.

STATUTORY RE-CONVEYANCE of mortgage of FREEHOLDS or LEASEHOLDS under the 29th section of the CONVEYANCING ACT, 1881 (a).

PREC.
LXXIV.

THIS INDRE made by way of statutory re-conveyance of mtge the — day of —, 18—, BETWEEN A. of, &c., mortgagee or transferee, of the one pt, and B. of, &c., mortgagor, of the other pt, supplemental to an indre made by way of statutory [transfer of] mtge, dated the — day of —, 18—, and made between, &c., WITNEETH that in conson of all principal money and interest due under that indre having been paid, of which principal and interest A.

(a) See p. 242, note.

PREC.
LXXIV.

hby acknowledges the rect, A. as mtgee hby conveys to B., ALL the lands and hereds now vested in A. under the sd indre, To HOLD TO (b) AND TO THE USE OF B. in fee simple, discharged from all principal money and interest secured by and from all claims and demands under the sd indre.

IN WITNESS, &c.

LXXV.

PREC.
LXXV.

RECONVEYANCE by Mortgagee of PERSONALTY.
VARIATIONS for a Mortgage to TRUSTEES, and for a Mortgage of a LIFE INTEREST in REALTY effected by DEMISE.

PARTIES, A. [and B.], mortgagees, 1; C., mortgagor, 2.

Recitals. *Recite the mortgage, stating the conveyance and proviso for redemption, setting out the parcels at length, Vol. I., p. 323;*

Intention to pay off. *State of mortgage debt, p. 5; AND WHAS the sd C. is desirous of paying off the sd principal sum of £——, and of having the sd mtged premes released and reassigned in mner hinafter appearing: NOW THIS INDRE WITNETH, &c., consideration and receipt as in Precedent LXX., the sd A. as mtgee (see p. 64, note), doth [A. and B. as mtgees do]*

Witnesseth.

Variations
for lease-
holds.

(b) For leaseholds mortgaged by assignment, say, "To HOLD to B., his exs, ads, and assigns for the residue now unexpired of the term of years granted by and subjt to the rent and covenants of the lease under which the premes are held, discharged, &c., as in text"; for a mortgage by demise, say, "to the intent that the term of years granted [assigned] by the sd indre may merge in the term of years granted by the lease under which the premes are held and become extinguished, and that the premes may henceforth be held by B., his exs, ads and assigns discharged, &c., as in text."

hby assign and release ALL AND SINGULAR the — and
 premes comprd in or assigned or granted by the hinbefore
 recited indre of mtge of the — day of —, or which are
 now by any means vested in the sd A. [and B.], subjt to re-
 demption by virtue of the same indre, *omitting estate clause,*
see Vol. I., p. 359, note : To HOLD the same premes UNTO the
 sd C., his exs, ads, and assigns, discharged, &c., *as in Pre-*
cedent LXIX., mutatis mutandis. [For a mortgage of a life
 estate in realty effected by demisc, say, and if other property is
 comprised in the mortgage, in a separate testatum, "doth [do]
 hby surrender and release unto the sd C., and his assigns,
 ALL AND SINGULAR the hereds and premes in the sd recited
 indre of mtge of the — day of — comprd or thby demised,
 or which are now vested in the sd A. [and B.] subjt to re-
 demption by virtue of the same indre, discharged, &c., *as*
above, to the intent that the sd term of years created by the
 sd indre of mtge may merge and be absolutely extinguished
 in the reversion of him, the sd C., in the sd premes.]

PREC.
 LXXV.
 Release.

Habendum
 to mort-
 gagor.
 Variation.

IN WITNESS, &c.

LXXVI.

ENDORSED RECEIPT *on* DISCHARGE of EQUITABLE MORTGAGE (a).

PREC
 LXXVI

I, the within named A., *mortgagee*, do hby acknowledge
 that I have this day received from the within named B.,
mortgagor, the sum of £—— in full discharge of all principal
 monies, interest, and costs secured by, and all claims and
 demands under the within written memorandum [indre]:

As WITNESS my hand, this — day of —.

(a) It is conceived that a mere receipt in this form is sufficient to discharge
 an equitable mortgage of any property, whatever may be its form, including

LXXVII.

PREC.
LXXVII.

APPOINTMENT of RECEIVER (a).

Recitals. *PARTIES, A., mortgagor, 1: B., [C., and D.], mortgagees, 2; K., receiver, 3. Recite mortgage deed, p. 4, stating the covenant for payment of principal, and interest after default, the conveyance subject to redemption, and any provisions such as the proviso for reduction of interest on punctual payment affecting the rate or time of payment of the interest, and any provisions for keeping up fire or life policies, describing the parcels as, "the several — and hereds situate in the parishes of —, and county of —, a parlar and*

Agreement. *rental whof is set forth in the schedule hto"; AND WHAS upon the treaty for the mtge effected by the hinbefore recited indre it was agrd that the sd K. should be appointed receiver of the rents and profits of the sd premes, with the powers hinafter given to him, and that the deed appointing him such receiver should contain such covenants and provons as are hinafter contd: NOW THIS INDRE WITNETH that in psuance of the recited agreemt, and in conson of the premes the sd A., with the concurrence of the sd B., [C., and D.], doth hby appoint the sd K., continue receivership clauses, p. 54, or shorter clause, relying on the statute, p. 59.*

**Wit-
nesseth.**

**Appoint-
ment of
receiver.**

IN WITNESS, &c.

Schedule of parcels.

**Receipt of
equitable
mortgage
sufficient.** even a formal second mortgage by conveyance subject to redemption (the legal estate being in the first mortgage); see 2 Dav. Prec., part 2, p. 277, note; and the receipt appears to be chargeable only with an ordinary receipt stamp, see *id.* p. 278, and p. 302, note; but it must not contain any words amounting to a *release* of the mortgage within the Stamp Act, 1870, sched. tit. MORTGAGE, which would make it chargeable as a reconveyance.

(a) See p. 53, note.

LXXVIII.

APPOINTMENT *by a mortgagee of a RECEIVER under* PREC.
 LORD CRANWORTH'S ACT *or the CONVEYANCING* LXXVIII.
 ACT, 1881 (a).

PARTIES, A., mortgagee, 1; B., receiver, 2. Recite the mortgage Recitals.
as in Precedent LXXVII., and the event which has made the
statutory power exercisable, if the appointment is made under
Lord Cranworth's Act, and no person is named in the mortgage
as a person to be appointed receiver, say: "AND WHAS the Notice
given.

(a) By Lord Cranworth's Act, 23 & 24 Vict. c. 145, s. 11 (which is repealed Power to
 by the Conv. Act, 1881, s. 71, but remains in force as to mortgages prior to appoint
 1882), a mortgagee (where the mortgage is by deed) of hereditaments of any receiver
 tenure is empowered to appoint or obtain the appointment of a receiver in under
 either of the following cases: (1) after the expiration of one year from the Lord Cran-
 time appointed for payment of the principal money; (2) when some interest is worth's
 in arrear for six months; (3) on the omission to pay any premium of insurance Act.
 payable under the mortgage by the mortgagor. The mortgagee may appoint
 as receiver any person named in the mortgage for that purpose, or, if no person
 is named, he may by writing delivered to any person interested in the equity
 of redemption or affixed on the mortgaged property require such person to
 appoint a proper person as receiver, and if no such appointment be made
 within ten days, he may in writing appoint any person he thinks fit.

By the Conv. Act, 1881 (which applies to mortgages by deed executed since Power to
 1881), ss. 19, 24, a mortgagee of any property, real or personal, is empowered appoint
 when the mortgage money has become due and the power of sale has become receiver
 exercisable (as to which, see p. 22, note) to appoint any person he thinks under
 fit receiver; but no person paying money to the receiver need inquire whether Conv. Act,
 any case has happened to authorize him to act. 1881.

A receiver appointed under either Act is the agent of the person entitled to Functions
 the equity of redemption, who is solely responsible for his acts (qy. as to the and duties
 effect of this where there is a second mortgage); he can recover and give of receiver.
 receipts for the rents or income over which he is appointed receiver in the
 name of either the mortgagee or the person entitled to the equity of redemption
 to the full extent of the interest which the mortgagor could dispose of.
 The receiver is entitled to retain for his remuneration and in satisfaction of
 his expenses a commission at such rate, not exceeding 5 per cent. on the gross
 monies received, as is specified in his appointment, or if none is specified,
 then at the rate of 5 per cent., or (under the Conv. Act, 1881) at such rate as
 the Court may allow. He is also, if so directed in writing by the mortgagee,
 to insure any of the mortgaged property which is insurable.

The appointment under either Act may be by writing not under seal, but it
 would usually be by deed.

PREC.
LXXVIII.
—

Desire to
appoint.

Appoint-
ment of
receiver.

Commis-
sion fixed.

Direction
to receiver
to insure.

sd A. did on the — day of — last by writing duly delivered [affixed on a conspicuous pt of the sd mtged premes], require K., of, &c., who is the pson [one of the psons] entled to the sd premes subjt to the sd mtge to appoint a fit and proper pson to be receiver of the same premes, but no appointmt has been made of a receiver psuant to such notice; AND WHAS the sd A. is desirous of appointing the sd B. to be receiver of the rents and profits of the sd mtged premes, NOW the sd A. by virtue of the power conferred on him by the Act of the 23 & 24 Vict. c. 145, or, "The Conveyancing and Law of Ppty Act, 1881," and of every other power in this behalf him enabling, doth hby appoint the sd B. to be receiver of the rents, profits, and income of all the ppty comprd in or subjt to the hin-before recited indre of mtge; AND IT IS HBY agrd that the commission of the sd B. as such receiver shall be at the rate of — per cent. per annum on the gross amount of the money received. [AND THE SD A. doth liby direct the sd B. to insure and keep insured against loss or damage by fire out of the monies received by him all ppty of an insurable nature which is comprd in or subjt to the sd mtge.]

IN WITNESS, &c.

Schedule of Parcels.

LXXIX.

PREC.
LXXIX.
—

AGREEMENT *between* MORTGAGEES *and* other PERSONS *interested as to deposit of* TITLE-DEEDS *with* BANKERS *on behalf of all parties* (a).

Recitals. PARTIES, A. and B., mortgagees, 1; C. and D., other parties interested, 2; E., mortgagor, 3: WHAS the several

(a) See also the forms of agreement for similar objects in 2 Dav. Prec., part 2, pp. 751, 753.

messuages, lands, and hereds which are shortly described in the first schedule hto have recently been conveyed by or by the direction of the sd E., to the sd A. and B., their hrs and assigns, by way of mtge for securing the sum of £—— and interest: AND WHAS the several deeds and munimts specified in the second schedule hto relate not only to the sd hereds described in the sd first schedule hto, but also to certain other hereds in or to which the sd C. and D. are interested or entled, and on the treaty for the sd loan it was agrd that the sd deeds and munimts should be deposited at the banking house of Messrs. —— at ——, and that such agreemts should be entered into in relation to the same as are hinafter contd, and accordingly the sd deeds and munimts have been deposited at the sd banking house in a box marked, &c. : NOW THIS INDRE WITNETH that it is hby agrd between the pties hto, so far as they are resply authorised or enabled in this behalf, THAT the sd several deeds and munimts shall remain in the custody of the sd Messrs. ——, and that the same, or any of them, shall not be removed or withdrawn from their custody by any of the pties hto, or any pson or psons claiming under or in trust for them or him resply, or any of them, without the previous consent in writing of the others or other of the sd pties, or the pscn or psons claiming under them or him resply: BUT NEVERTHELESS the same shall at all times be open to the inspection of all or any of the sd pties hto, or any pson or psons claiming under or in trust for them or him resply, or their respive solors, any of whom shall and may at all times be at liberty to make copies, abstracts, or extracts of or from the same or any of them : AND IT IS HBY further agrd that in case at any time or times hereafter it shall be necessary to remove the sd deeds and munimts or any of them, in order to produce the same unto or for or on behalf of the sd pties hto of the first or second pts, or any pson or psons claiming under or in trust for them or him resply, or any of them, or to their or any of their counsel, solors, or agents, or in the course of any judicial or

PREC.
LXXIX.

Mortgage.

Deeds re-
late to
other
heredita-
ments.

Wit-
nesseth.
Agree-
ment.

Deeds to
remain at
bankers.

But be
open to in-
spection.

Further
agreement
that deeds
may be re-
moved for
the purpose
of produc-
tion.

PREC.
LXXIX.
—

other proceedings or otherwise on their respie behalf, then, and in such case such pson or psons as the sd Messrs. — shall from time to time appoint for that ppose shall attend with all and every or any of the same deeds and munimts and produce the same at such time and place and for such ppose as the pson or psons requiring such production shall by such notice in writing direct or appoint.

IN WITNESS, &c.

Two Schedules.

LXXX.

PREC.
LXXX.
—

DEED for REDUCING the INTEREST on a Mortgage debt, the EQUITY of REDEMPTION being in SETTLEMENT.

Recitals.
Title of
tenant for
life.

Wit-
nesseth.

Agree-
ment.
For reduc-
tion of
interest.

PARTIES, A., B., and C., mortgagees, 1; D., tenant for life of equity of redemption, 2. Recite mortgage to A., B., and C., on joint account, p. 4; State of mortgage debt, p. 5: AND WHAS, subjt to the hinbefore recited indre of mtge, and the principal sum of £—— and interest thby secured, the sd D. is tenant for life of the hereds and premes therein comprd : NOW THIS INDRE WITNETH, that in psuance of an agreemt in this behalf and in conson of the premes it is hby agrd and the sd A., B., and C., do hby for themselves, and their assigns, covenant with the said D. and his assigns, THAT if the sd D. or his assigns, or any other pson or psons for the time being interested in the equity of redemption of the sd mtged [premes, shall on every half-yearly day on which interest is made payable under the sd indre of mtge or within fourteen days, &c., continue provision for reduction of interest on punctual payment, p. 84, mutatis mutandis,

IN WITNESS, &c.

LXXXI.

UNDERTAKING of MORTGAGOR, or his SOLICITOR to
pay COSTS on COMPLETION of Mortgage, or on
SECURITY proving DEFECTIVE as to VALUE or
TITLE (a).

PREC.
LXXXI.
—

To Messrs. —

Gentlemen,

I undertake to pay your costs and charges, including surveyors' valuation fees, upon the proposed loan by clients of yours of £—, at — per cent. per annum, on secy of a freehd este belonging to me, or, to —, situate at —, on completion of the mtge, or in case the secy either as regards value or title [or otherwise] shall be such as your clients [as trees] may be advised that they ought not to accept.

I am, &c.

(a) See, as to what expenses are covered by this, *Re Blakesley*, 32 Beav. 379; *Sweeland v. Smith*, 1 Cr. and M. 585.

NOTICES.

I.
Notice to
obligor of
assignment
of bond
debt.

To A., *obligor*, of, &c.

I hby give you notice that by a deed or instrumt, dated this — day of —, the principal sum of £—, the paymt whof is secured to B., of, &c., his exs, ads, and assigns, by your bond, dated the — day of —, togr with all interest due and to become due thereon, as from the — day of — now last, has been assigned by the sd B. to C., of, &c.

Dated the — day of —, 18—.

(Signed) D.,

Address.

Solor for the sd C.

II.
Notice to
trustees of
settlement
of assign-
ment of a
rever-
sionary
interest
thereunder
to a pur-
chaser or
mortgagee.

To E. and F., the trees of a settlemt, dated, &c., made on the marre of L., of, &c., and M., his wife, *or*, “of the will and codicils of X., late of, &c., deceased,” and all others whom it may concern.

We do hby give you notice that by an indre dated, &c., and expd to be made, &c., *description from parcels, as for instance*, “All the share or interest of the sd A. of or in the trust funds and ppty comprd in or subjt to the trusts of the above mentd settlemt, *or*, “will,” expectant on the decease of the survor of the sd L. and M.,” has been assigned by the sd A. to the sd B., his exs, ads, and assigns, for his and

their absolute benefit, *or*, "by way of secy, as therein mentd."

Dated this — day of —.

(Signed) C. and D.,

Address.

Solors for the sd B.

To A. and B., the trees of the will and codicils of X., late of, &c., deceased, and all others whom it may concern.

iii.
Notice-to
trustees of
will of as-
signment
of share of
a residuary
legatee to
the trustees
of his mar-
riage set-
tlement.

BE pleased to take notice that by an indre, dated &c., and made between, *parties*, the sd C. has assigned unto the sd D. and E., their exs, ads, and assigns, *parcels from assignment*, as for instance, "All his share or interest (whether under any appointmt, or in default of appointmt), of or in the trust funds or ppty representing the residuary este of the sd X.," To hold the same (subj to the prior interests of the sd F. and G., his wife, as thinbefore appearing in the same premes) unto the sd D. and E., their exs, ads, and assigns, upon the trusts therein mentd.

Dated this — day of —.

(Signed) H. and Co.,

Address.

Solors for the sd D. and E.

To the — Assurance Society.

WE hby give you notice that by an indre, dated, &c., and made, &c., a certain policy of assurance, effected with you by the sd K., *mortgagor*, on his own life, for the sum of £—, and numbered — in your books, and all monies assured by or to become payable under the sd policy, have been assigned by the sd K. to the sd L., his exs, ads, and assigns, absolutely, *or*, "by way of mtge, as therein mentd ;" And we

iv.
Notice to
insurance
office of
assignment
of a life
policy pur-
suant to
Policies of
Assurance
Act, 1867.

request you to give us a written acknowledgmt of the rect of this notice.

Dated the — day of —.

(Signed) M. and Co.

Address.

Solors for the sd L.

v.
Notice of
intention to
pay off a
mortgage.

To A., *mortgagee*, of, &c.

I, B. *mortgagor*, do hby give you notice that I shall, on the — day of —, *six months from the date of notice*, pay off all principal monies and interest secured by an indre of mtge, dated the — day of —, and expd to be made, &c.

As witness my hand this — day of —.

vi.
Notice re-
quiring
payment of
mortgage
money.

To A., *mortgagor*, of, &c.

If the owners of the equity of redemption are unknown, or cannot be found, the notice should be addressed, "To all psons interested in the equity of redemption of the ppty comprd in the mtge hinafter mentd."

WE, B. of, &c., and C. of, &c., *mortgagees*, do hby require you to pay off, on or before the — day of — next, or, "within — calendar months from the service of this notice upon you," the principal monies and interest due to us on the secy of an indre of mtge, dated, &c., and expd, &c., and further, that in default of your so doing, we intend to sell the ppty subjt to such mtge or such portion thof as we may think fit.

As witness our hands this — day of —.

vii.
The same
where
money is

To A., *mortgagor*, of, &c.

I HBY demand of you immediate paymt of the sum of £— owing to me on the secy of an indre, &c., and the

interest at the rate of — per cent. per annum from the — day of — last owing in respect thof. payable on demand (a).

Dated, &c.

To A., mortgagee, of, &c.

I HBY give you notice that I have advanced to K., mortgagor, of, &c., the sum of £—, the repaymt whof, with interest, is secured by an indre, dated, &c., on certain, *give sufficient description of the property*, now in mtge to you, or, “on the — comprd in a mtge to you effected by an indre dated, &c.”

As witness, &c.

VIII.
Notice by
2nd mort-
gagee to 1st
mortgagee.

To A., tenant, of, &c.

I, B., mortgagee, of, &c., do hby give you notice that I have become entled as mtgee by virtue of an indre, &c., to the rect of the rent of the house, No. — — Street, now held by you under Mr. —, and I require you to pay to me the rent now due, and henceforth to become due, in respect thof.

As witness my hand this — day of —.

IX.
Notice by
mortgagee
to tenant
to pay rent
to him.

NOTICE is hby given that the ptnship lately subsisting between us, the undersigned A., B., and C., carrying on business as — at — under the style or firm of A. and Co., has this day been dissolved by mutual consent [so far as regards the sd B., who retires from the firm], or, “has this day determined by effluxion of time.” [All debts due to, or owing by, the sd late firm will be received and paid by the sd

X.
Notice of
dissolution
of partner-
ship.

(a) As to what is a sufficient demand, see *Toms v. Wilson*, 4 B. & S. 442; *Brighty v. Norton*, 3 B. & S. 305; *Ex parte Trevor*, 1 Ch. D. 297; *Bramicell v. Eglinton*, 5 B. & S. 39; *Massey v. Sladen*, L. R. 4 Ex. 13.

A. and C., who will continue the sd business under the present style or firm of A. and Co.]

As witness our hands this — day of —,

A.
B.
C.

x.
Notice to
quit given
by landlord
to tenant.

To A., *tenant*, of, &c.

I, B., of, &c. [as agent for and on behalf of C., of, &c.], hby give you notice to quit and deliver up possion of the — and premes, situate at —, in the county of — which you hold of me [of the sd C.] as tenant, on the — day of — next, *or if the day when the tenancy expires is not known, say*, “at the expiration of the year of your tenancy which will expire next after the — day of — next.”

As witness my hand this — day of —.

xii.
Notice to
quit given
by tenant
to landlord.

To A., *landlord*, of, &c.

I, B., of, &c. [as agent for and on behalf of C., of, &c.], hby give you notice, that I shall [he will] quit and deliver up possion of the — and premes, situate at —, in the county of —, now held by me [him] as your tenant, on the — day of —.

As witness my hand this — day of —.

xiii.
Notice by
lessor or
lessee to
determine
a 21 years'
lease at the
expiration
of the first
7 or 14
years, pur-
suant to a
power in
the lease.

To C., *landlord or tenant, as the case may be*.

IN psuance of a power contd in the indre of lease, dated, &c., under which the — and premes situate, &c., thby demised are held, I, A., of, &c. [as agent for and on behalf of B.], the owner [of the reversion expectant on the determination] of the term created by the sd lease, do hby give you notice that it is my intention to determine the sd lease, and to put an end to the term thby created at the end of the first seven [fourteen] years of the sd term.

As witness my hand this — day of —.

To A., *tenant*, of, &c.

I, B., *landlord*, of, &c., hby give you notice that Mr. — my surveyor, on the — day of — entered upon the messuage known as —, held by you of me under an indre of lease, dated &c., and examined the condon thof, and found the defects and wants of repair mentd in the schedule hto, and further I require you to repair and make good such defects and wants of repair within — calendar months, psuant to the covenants of the sd lease.

xiv.
Notice to
tenant to
repair.

As witness my hand this — day of —.

To A., *purchaser*, of, &c.

BE pleased to take notice, that B., of, &c., the vendor of the freehd este and ppty situate at, &c., contracted to be pchased by you by an agreemt dated the — day of — last, is willing and ready to execute and to cause and procure all other necessary pties (if any) to concur in a proper conveyance to you, or otherwise as you may direct, of the fee simple of the premes comprd in the sd contract according to the condons and stipulations therein contd or referred to, and that the vendor now calls upon and requires you without further delay to tender such conveyance for execution, and pay the remainder of the pchase or conson money, togr with such interest for the same as may be payable, and further, that the vendor will hold you liable to make good to him such loss, costs, damages, and expenses, as may be incurred by him by reason of your default in performing the sd contract.

xv.
Notice
from
vendor's
solicitor to
purchaser
to complete
purchase.

As witness my hand this — day of —.

(Signed) C.,

Vendor's solor.

Witness.

xvi.
Notice by
tenant for
life to
trustees
of intention
to sell, &c.,
under the
Settled
Land Act,
1882 (c).

To A., one of the trees [to Messrs. B. & Co. the solors to the trees] of a settlemt dated, &c., made on the marre of D. and E. his wife, *or*, "the will dated, &c., and proved on, &c., of X. deceased."

I HBY give you notice that it is my intention under the powers of the Settled Land Act, 1882, to sell, *or*, "lease," *as the case may be*, the ppty described in the schedule hto being pt of the ppty comprd in or subjt to the above-mentd settlemt, *or*, "will."

Schedule giving short description of property.

Dated this — day of —.

(Signed) D., *tenant for life.*

Address.

xvii.
Notice by
solicitors
of tenant
for life to
trustees of
intention
to exercise
powers of
Settled
Land
Act (c).

To A., of &c., *as in last form.*

As solors for and on behalf of D., of, &c., we hby give you notice that it is the intention of the sd D., by virtue of the powers vested in him by the Settled Land Act, 1882, as tenant for life of the — este, in the parish of, &c., and county of, &c., under the above mentd settlemt [will] to enter into a contract with X., of, &c., and Y., of, &c., for the conveyance to them of a piece of land situate, &c., forming part of the sd — este, in exchange for a piece of land situate, &c., and for carrying out certain agreemts with respect to building upon part of the sd — este and other adjoining ppty belonging to the sd X. and Y., and the making of roads through the lands and ppty afsd, and for securing to the owners of the sd — este and the sd X. and Y. rights of way and other easemts and rights over such roads, and for other incidental pposes.

As to
notices
under
Settled
Land Act.

(c) See the Act, s. 45, and Vol. I., p. 838, note. It is assumed that a notice in general terms will suffice; but whether a notice of each separate transaction is necessary, and whether a notice once given will remain effectual for any length of time, and notwithstanding subsequent changes in the trustees or their solicitors, is left in doubt by the Act. The notice may, of course, be given by the solicitor of the tenant for life on his behalf.

To A., *lessee*, the lessee of the house, buildings, and premes, situate, &c., comprd in a lease dated, &c., and made between, &c.

xviii.
Notice by
lessor to
lessee to
repair pre-
paratory to
a re-
entry (d).

BE pleased to take notice as follows :—

1. By the above-mentd lease the lessee covenanted, *set out the covenant to repair verbatim.*

2. The above-mentd covenant has been broken and the parlar breaches which are complained of are the committing or allowing the dilapidations mentd in the schedule hto.

3. I require you to remedy all the afsd breaches and to make compensation to me in money for such breaches.

As witness my hand this — day of —.

B., *lessor.*

Schedule.

I, A. B., *old surname*, of —, in the county of —, do hereby give notice, that [in compliance with the will of X., of, &c., Esq., deceased, dated the — day of — and proved, &c.] I have assumed and intend henceforth upon all occasions and at all times to sign and use and be called and known by the surname of C. [only,] in lieu of and substitu-

xix.
Advertise-
ment of
change of
surname to
be pub-
lished in a
newspaper
(c).

(d) The Conv. Act, 1881, s. 14, prevents a lessor from enforcing a forfeiture for breach of covenant or condition in a lease or underlease (except as mentioned in sub-secs. 6 and 8), unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and, if it is capable of remedy, requiring the lessee to remedy it, and, in any case, requiring him to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor; and the words "lessor" and "lessee" include their respective representatives and assigns; see sub-sec. (3). As to the mode of serving the notice, see s. 67.

As to
notice to
lessee
before
re-entry
under
Conv. Act,
1881.

(e) A change of surname is now very commonly evidenced by a deed poll enrolled (formerly in Chancery, now in the Central Office), accompanied by an advertisement in the newspapers, unless it takes place in compliance with a condition in a will, or settlement, requiring some other mode of assumption. The deed poll may follow the wording of the advertisement. As to changing a surname, see 3 Dav. Prec., p. 357, note.

As to
changing
surname.

tion for [*or*, in addition to] my present surname of B., and that such intended change or assumption of name is formally decl'd and evidenced by a deed poll under my hand and seal, dated this day, and intd to be forthwith enrolled in the Central Office of the Supreme Court of Judicature. In testimony whof I do hby sign and subscribe myself by such my intd future name.

A. [B.] C.

xx.
Statutory
notice to
creditors.

NOTICE is hby given psuant to the Act of Parliamt of the 22nd and 23rd Vict. c. 35, that all psons having any claims or demands upon or against the este of K., late of —, in the county of —, deceased (who died on the — day of —, and whose will was proved by —, of —, in the county of —, the sole exor therein named, on the — day of —, in [*or*, administration of whose este and effects was granted to —, of —, in the county of —, on the — day of —, by] the — Registry of the Probate Division of the High Court of Justice) are hby required to send in the parlars of their debts or claims to the sd exor [admor] at the offices of the undersigned, his solors, on or before the — day of —; And notice is hby also given, that after that day the sd exor [admor] will proceed to distribute the assets of the sd K., deceased, amongst the pties entled thto, having regard only to the claims of which he shall then have had notice, and that he will not be liable for the assets, or any pt thof, so distributed, to any pson of whose debt or claim he shall not then have had notice.

Dated this — day of —.

A. and B.

Address.

Solors for the sd exor [admor].

PARTITIONS.

I.

AGREEMENT for PARTITION (a) of FREEHOLDS, COPY-
HOLDS, and LEASEHOLDS, to be made by a single
ARBITRATOR. SOME SHARES belonging to a MARRIED
WOMAN, another SHARE being VESTED in TRUS-
TEES, with power to partition, and the remaining
SHARE being in SETTLEMENT. VARIATIONS where
one SHARE is in an INFANT, where the CHOICE of
ALLOTMENTS is to be made by LOT, where the PRO-
PERTY is subject to a MORTGAGE, and where the
partition is of the SURFACE only without the
MINERALS.

PREC. I.

AGREEMENT made this — day of —, BETWEEN Parties.

(a) As to partitions, see 5 Dav. Prec. 473 ; 8 & 9 Vict. c. 106, ss. 3 and 4 ; As to par-
and as to the doctrine to which the latter enactment has reference, see Co. tititions.
Litt. 173 b., 174 a. b. As to partitions by the Land Commissioners under
the General Inclosure Acts, see note to next Precedent. As to partitions by
the Court, see the Partition Acts, 1868, 1876, 31 & 32 Vict. c. 40 ; 39 & 40
Vict. c. 17.

By the Settled Land Act, 1882, full powers of partition are given to tenants
for life (as defined by s. 2, including other limited owners as defined by s. 58) tenant for
under any settlement, past or future, by deed or will, of land of any tenure life to
(including settlements by way of trust for sale, s. 63), where the settlement partition
comprises an undivided share, or where, under the settlement, the settled under
land has come to be held in undivided shares (ss. 3 (iv.), 19) ; and money may Settled
be paid by any party for equality (s. 3 (iv.)), and any money required for that Land Act,
purpose may be paid out of any capital money under the Act (ss. 21 (iv.), 32, 1882.
33) ; or may be raised by the tenant for life by mortgage (s. 18).

The partition must be for the best consideration in land, or land and money, Subsidiary
provisions.

PREC. I.

A., owner of some shares, 1; B., and K., his wife, owner of

that can reasonably be obtained, s. 4 (2); but may be subject to any stipulations as to title, &c. (s. 4 (5)); and any restriction or reservation as to building on or other user of the land, or as to mines and minerals, or any other thing, may be imposed or reserved and made binding on the tenant for life and the settled land, or on any other party, and the land given on partition to him (s. 4 (6)). The partition may also be of the surface apart from any of the mines and minerals, or *vice versa*, and with or without grants or reservations of easements, rights, &c., for mining purposes in relation to the settled land or any part thereof, or any other land; and may be made subject to and in consideration of the reservation of an undivided share in mines or minerals (s. 17). The tenant for life may, with the consent of the incumbrancer, charge any incumbrance affecting land given on partition on any other part of the settled land (s. 5, and see s. 24 (4, 5, 6)).

Power of
tenant for
life to
convey.

The tenant for life is, by s. 20, empowered to execute the necessary conveyance for effecting the partition "for the estate or interest, the subject of the settlement," including power to convey any legal estate in copyholds or leaseholds vested in trustees (see as to this, Vol. I., p. 844, note); a deed relating to copyholds conferring the right to admittance without any surrender.

As to
money re-
ceived for
equality.

Money received for equality of partition must be paid to the "trustees of the settlement" (as defined by s. 2 (8), or s. 63), or into Court at the option of the tenant for life (s. 22); and the receipt of the trustees is a good discharge (s. 40); but it is not to be paid to less than two trustees, unless the settlement authorises the receipt of capital trust money by one trustee (s. 39). As to appointing trustees where there are none, see s. 38.

As to con-
veyance of
land re-
ceived on
partition.

By s. 24 the land taken on partition must, if freehold, be conveyed to the subsisting uses of the settlement, and, if copyhold or leasehold, upon trusts corresponding with the subsisting uses of the settlement, with a provision preventing leaseholds from vesting absolutely in a tenant in tail by purchase dying under twenty-one.

Power to
enter into
contracts.

Full power is given to the tenant for life to enter into, and vary or rescind, a contract for partition, which is to be binding on and enure for the benefit of his successors in title (s. 31).

As to
giving
notice to
trustees.

The Act requires that notice should be given by the tenant for life before exercising his statutory powers to the "trustees of the settlement" (of whom there must be at least two, unless the settlement otherwise provides), and their solicitor (s. 45). See as to this, Vol. I., p. 838, note; *Wheelwright v. Walker*, W. N. 1883, 30.

As to a tenant for life who is an infant, married woman, or lunatic, see ss. 60, 61, 62.

As to
infant
absolutely
entitled.
Express
powers
reserved.

The powers of the Act are extended to the case of an infant who is absolutely entitled (s. 59), the powers being in that case vested in the "trustees of the settlement," if any (s. 60); see as to this, Vol. I., p. 853, note.

Any express power of partitioning contained in the settlement is preserved, but cannot be exercised without the consent of the tenant for life (s. 56).

other shares (b), 2; C. and D., trustees of share, hinafter called PREC. I.
the trees, 3; E., tenant for life of another share, 4. WHAS Recitals.
 the sd A. is entled to — undivided shares, and the sd B. Title of
 and K. his wife are entled, in right of the sd K., to — shares.
 undivided shares of and in the freehd, copyhd, and leasehd in fee.
 hereds hinafter described; AND WHAS one undivided — Title of
 share thof is vested in the trees, under the will of X. de- trustees.
 ceased, dated, &c., and proved, &c., with power to concur
 in a partition of the sd premes, with or without the minerals,
or, "is vested in X., an infant, under the will, &c., and the
trees are the trees of the settlemt of such share for the
pposes of the Settled Land Act, 1882;" AND WHAS the sd Title of
 E. is tenant for life in possion of the remaining — share tenant for
 of the sd premes, under a settlemt dated, &c.; [AND WHAS Mortgage.
 all the sd hereds and premes are subjt to a mtge effected by
 an indre dated, &c., for £—— and interest at — per cent.
 per annum; *State of mortgage debt, p. 5;*] AND WHAS the Agree-
 sd pties hto (the sd B. contracting for himself and the sd K. ment.

See further as to the general provisions of the Act, Vol. I., p. 835, note, p. 844, note.

In the absence of an express power, trustees cannot join in a partition of the As to
 surface without the minerals, or *vice versa*, without the sanction of the Court minerals.
 under 25 & 26 Vict. 108; but the powers of the Settled Land Act will
 probably, except in rare cases, supersede that Act.

In the above Precedent the tenant for life of one share joins in the partition
 under the powers of the Settled Land Act. In the case of the share vested in
 the trustees, parties of the third part, it is assumed that there is no tenant for
 life whose consent is necessary under s. 56 of the Settled Land Act, or that
 the owner is an infant, so that the powers of the Act are vested in the trustees
 under ss. 59 and 60.

(b) If the title of the married woman arose, or she was married, after 1882, As to
 she can dispose of her share as a *feme sole* under the Married Women's married
 Property Act, 1882, ss. 1, 2, and 5 (see p. 91, note). But if both the women.
 marriage and the acquisition of the property were prior to 1883, the case is
 governed by the old law; and the husband must join in the partition when-
 ever this would have been necessary before the late Act. As to the case
 where the property is settled to the wife's separate use under the old law, see
 p. 92, note. Whether the wife's power of disposition depends on the old or
 new law, she can enter into contracts under the late Act (s. 1) so as to bind
 her separate estate, if any; but where the property is not the wife's separate
 estate, the husband should be made a party to the contract.

PRER. I. his wife, and the sd E. contracting under the powers of the Settled Land Act, 1882, and the trees contracting under the afsd power, or, "under the powers of the same Act,") have agrd to make a partition of the sd hereds and premes in mnner hinafter appearing; [But it has been agrd that such partition shall include the surface only of the sd lands, and shall not extend to or affect the mines and minerals in, under, or upon the same or any pt thof(c).] NOW IT IS HBY AGRD as follows :—

Partition
to be made
by arbi-
trator.

1. M. of —, hinafter called the arbitrator, shall forthwith make a partition and division of the freehd, copyhd, and leasehd hereds described in the schedule hto [exclusive of the mines and minerals in, under, or upon the same or any pt thof] into — several allotmts, convenient to be held in severalty, and as nearly as may be of equal value, or, "equal [or, proportionate] resply in value to the several undivided shares of the sd pties in the sd hereds," and, if necessary, shall direct any of the pties to give to any of the other pties a sum of money for equality of partition, and fix the amount to be given.

Arbitrator
to make
survey, &c.

2. THE ARBITRATOR shall make or obtain such a survey and valuation of the sd hereds, and such maps, plans, and schedules thof, as may appear to him to be necessary or proper for the ppose of the sd partition.

As to mort-
gage.

[3. THE ARBITRATOR shall direct how the sd mtge debt and the interest now due and to accrue due thereon shall be borne, and what indemnity in respect thof shall be given by any of the pties to the others of them.]

Apportion-
ment of
rent of
leaseholds.

4. THE ARBITRATOR shall direct how the rent reserved by the sd indre of lease shall be apportioned between the sd allotmts, and whether any and what indemnity in respect thof, and of the covenants contd in the sd lease, shall be given by any of the pties to the others or other of them.

(c) For a partition excepting underground and not surface minerals, see Precedent V., p. 281.

5. As soon as the partition and division shall have been made, the arbitrators shall direct which of the allotmts shall be taken by the respive pties entled to or contracting in relation to the sd undivided shares; [or, As soon as the partition and division shall have been made, the pties entled to or contracting in relation to the sd undivided shares shall draw lots, in such mner as the arbitrator shall decide, for priority of choice between the sd allotmts, and shall successively make choice of their respive allotmts within such time as the arbitrator shall decide,] and the allotmts shall be appropriated accordingly.

Here insert any provisions as to title to be shown by the several parties, commencing with the common root of title; see Vol. I. CONDITIONS OF SALE.

6. THE PARTITION shall be completed and carried into effect on the — day of —, or such later day as the arbitrator may appoint, on which day the several pties hto and all other necessary pties, if any, shall resply execute and do all such assurances and acts as shall be necessary or proper for carrying the same into effect, and any question as to the form and contents of any of such assurances or the acts to be so done shall be determined by the arbitrator, and upon the execution and doing of such assurances and acts, the money, if any, which shall become payable for equality of partition, shall be paid togr with interest after the rate of — per cent. per annum from the time appointed for the completion of the partition, in case the same shall not be then completed.

7. THE SD A. and B. [and E.] shall enter into such implied statutory covenants for title and further assurance as are usual in conveyances on sales with such modifications, if any, as the case may require, but the liability of the sd E. under such covenants shall, as regards the reversion of his share expectant on his life este, be restricted to the acts of

(c) As to the statutory covenants for title, &c., and production of muni-
ments, see Vol. I., pp. 365 and 386, notes.

- PREC. I.** himself and psons claiming under him, and the trees shall not be required to enter into any covenant except the usual implied statutory covenant against incumbrances, and any acknowledgment of the right to, production of munimts retained by them which may be required.
- Possession and outgoings.** 8. THE RESPIVE pties shall be entled to the possion or rect of the rents and profits of their respive allotmts, and shall pay the outgoings in respect thof from the time appointed for the completion of the partition.
- Retention of title deeds.** 9. THE ARBITRATOR shall determine which of the pties shall have the custody of such of the munimts of title as relate to more than one of the allotmts [but the trees shall not be required to give any covenant or undertaking for safe custody of any munimts].
- Preparation of deeds.** 10. THE ASSURANCE of each allotmt and any other deed or instrumt relating thto shall be prepared by and at the expense of the pty to whom the same shall be appropriated.
- Incorporation of provisions of Conv. Act, 1881 (d).** 11. SUCH OF the provons of the Conv. Act, 1881, with respect to contracts for sale as may be applicable shall as far as may be apply to and be deemed to be incorporated in this agreemt in the same mner as if the sd partition were intended to operate by way of mutual sales.
- Costs.** 12. THE COSTS of the sd partition, including the remuneration to the arbitrator and the costs of the preparation and execution of these presents and of all acts and things to be done by virtue of these presents, other than the costs incurred by the several pties in making out and investigating the several titles to the sd undivided shares, and save as hby or by the statute lastly hinbefore referred to or otherwise provd, shall be borne by the several pties in the proportions which shall be determined by the arbitrator [in the proportions following, that is to say, &c.]
- Decision to be final.** 13. THE DECISION of the arbitrator as to any of the matters afsd shall be final and absolutely binding on all pties.

(d) See s. 3 (3) as to recitals being evidence, and (6) as to expenses.

14. IN CASE the arbitrator, or any other arbitrator appointed by virtue of this present clause, shall die, or refuse, or become incapable to act before the matters referred to him shall have been determined, a majority of the sd pties hto (the trees counting as one pson), or in default thof, the president for the time being of the Incorporated Law Society may, on the request of any one of the sd pties, nominate some other pson to be arbitrator; and the pson so nominated shall, as to all the matters remaining to be determined, have the same powers and authorities as if he had been originally nominated an arbitrator.

PREC. I.
Provision
for ap-
pointment
of new
arbitrator.

As witness the hands of the sd pties.

Schedule of parcels.

II.

AGREEMENT for PARTITION of FREEHOLDS to be made by TWO ARBITRATORS and effected through the LAND COMMISSIONERS (a). PREC. II.

PARTIES, A., owner of one undivided moiety, 1; B., tenant for life of the other moiety, 2. WHAS the sd A. is entled in fee simple in possion to one undivided moiety of the hereds described in the schedule hto, and the sd B. is under an indre dated, &c., being the settlemt executed on his marriage, tenant for life in possion of the other undivided

Recitals.

(a) See "The Inclosure Acts, 1845 to 1876," 8 & 9 Vict. c. 118, ss. 90 to 94; 11 & 12 Vict. c. 99, ss. 13 and 14; 12 & 13 Vict. c. 83, s. 7; 15 & 16 Vict. c. 79, ss. 17, 30, and 31; 17 & 18 Vict. c. 97, s. 8; 20 & 21 Vict. c. 31, ss. 7 to 11; 22 & 23 Vict. c. 43, ss. 10 and 11; 31 & 32 Vict. c. 89, s. 2; Dav. Prec., vol. i., part i., p. 99, note, and see Cooke on the Inclosure Acts. Recourse can be had to the Acts only where the inequality in value does not exceed one-eighth, which is to be compensated by a rent-charge. The Inclosure Commissioners are now styled "the Land Commissioners for England" under the Settled Land Act, 1882, s. 48.

PREC. II. moiety of the sd hereds: AND WHAS the sd A. and B. are
Agree- desirous of making a partition of the sd hereds: NOW IT
ment. IS HBY AGRD as follows :

Arbitrators 1. M. of —, and N. of —, hinafter called the arbi-
to make trators, *continue as in clause 1 of last Precedent, substituting*
partition. *for the last part of the clause, "and shall determine how*
any inequality in value shall be compensated."

2. *Clauses 2 and 5 of last Precedent.*

Applica- 3. As soon as the appropriation shall have been made,
tion to the sd A. and B. shall forthwith apply to the Land Com-
Land Com- missioners for England for an order of partition under the
missioners. seal of the sd Commissioners, for the ppose of carrying the
sd partition into effect.

Costs. 4. THE COSTS of the sd partition, including the costs of
this agreemt and of the sd application to the Land Com-
missioners and the remuneration to the arbitrators, shall
be borne by the pties equally.

Decision to 5. *As in last Precedent, clause 13, adding, and in case*
be final. *they shall differ in opinion as to any matter, the same shall*
be referred to an umpire to be chosen by them before they
enter upon the business, and his decision shall be final.

Provision 6. IN CASE the sd M. or any other arbitrator appointed
for ap- by the sd A. by virtue of this present clause shall die or
pointment refuse or become incapable to act before all the matters
of new afsd shall have been determined, the sd. A may nominate
arbitrators. another arbitrator in his place. *Similar power to B. to*
nominate arbitrator in place of N.; And every pson so
nominated, &c., as in last Precedent, clause 14 (b).

IN WITNESS, &c.

Schedule of parcels.

(b) If desired, a clause may be added, limiting the time for completion as
in the agreement for an exchange, Vol. I., p. 593, clause 4.

III.

PARTITION DEED of FREEHOLDS *between two* PREC. III.
 TENANTS in COMMON, JOINT TENANTS, or CO-
 PARCENERS *effected by ONE conveyance. Appor-*
tionment of RENT-CHARGE.

PARTIES, A., one co-owner, 1; B., another co-owner, 2;
C., grantee to uses, 3. Recite title of A. and B. as tenants Recitals.
in common, joint tenants, or co-parceners to the heredita-
ments described in the schedules, subject to a rent-charge.
 AND WHAS the sd A. and B. are desirous of making a par- Desire to
 titution of the sd pieces of land and hereds described in the make par-
 sd schedules hto, and they have agrd that the hereds comprd tion.
 in the first schedule hto shall be taken by and appropriated
 to the sd A. in severalty, in lieu of his undivided share of
 the entirety of the sd hereds, and that, &c., *premises in*
second schedule to be taken by B., and it has been further Sum to be
 agrd that the sum of £—— shall be paid by the sd A. to paid for
 the sd B. as and for equality of partition: AND WHAS the equality.
 sd sum of £—— has been paid by the sd A. to the sd B. Payment.
 before the execution hereof, as the sd B. doth hby ac-
 knowledge: AND WHAS the sd A. and B. are desirous that Mode of
 the hereds so to be allotted to them resply shall be con- assurance.
 veyed and assured in mner hinafter appearing; *Recital intro-*
ductory to covenant for production of deeds, Vol. I., p. 341:
 NOW THIS INDRE WITNETH that for effecting the Wit-
 sd partition and in conson of the premes, the sd A. and B., nesseth.
 [if joint tenants, “jointly as beneficial owners (a) do,” if
 tenants in common or co-parceners, “each of them con-
 veying as beneficial owner (a) of one moiety of the hereds

(a) These words imply the usual qualified covenants for title and further assurance by each party, as on a sale, as to the share expressed to be conveyed by him, or in the case of joint tenants as to the entirety, by virtue of the Conv. Act, 1881, s. 7; see Vol. I., pp. 367, 368, note. The liability under the implied covenants in the latter case should be restricted by a proviso as in the text.

PREC. III. hby assured, or, 'of the respive share or shares, este, and interest in the hereds hby assured to which he is entitled as hinbefore appears,' and all other, if any, his share, este, or interest therein, do and each of them doth"] hby grant unto the sd C. and his hrs, *Parcels by reference to two schedules; omitting general words and estate clause, see Vol. I., pp. 357, 359 notes; Habendum*, UNTO the sd C. and his hrs TO THE USES following, that is to say, As to the entirety of the sd — hereds and premes comprd in the sd first schedule hto, TO THE USE of the sd A., his hrs and assigns for ever, to be henceforth held by him and them in severalty: AND AS to the entirety of the sd — hereds and premes comprd in the sd second schedule hto, TO THE USE of the sd B., his hrs and assigns for ever, to be henceforth held by him and them in severalty. PROVD ALWAYS and it is hby agrd that the sd hereds comprd in the first schedule hto shall be charged with £—— a year as pt of the sd yearly rent-charge of £—— in exoneration of the sd hereds comprd in the second schedule hto, and the sd hereds comprd in the sd second schedule hto shall be charged with £—— a year, the remr ofj the sd yearly rent-charge of £——, in exoneration of the sd hereds comprd in the sd first schedule hto; AND IT IS hby agrd and decl'd that if and whenever any claim or demand shall be made upon the sd hereds comprd in the first schedule hto, or any pt thof, or upon the owner or occupier of the same hereds in respect of the sd pt hby charged upon the sd hereds comprd in the second schedule hto of the sd yearly rent-charge of £——, and the sd A., his hrs or assigns shall in consequence of such claim or demand pay any monies or be put to any expense, the sd A., his hrs, exs, ads, or assigns may enter into and upon the sd hereds comprd in the second schedule hto, or any part thof and distrain thereupon for all such monies or expenses which he the sd A., his hrs or assigns, shall so pay or be put to as afsd, in like mner as landlords may now do for rent in arrear, to the intent that thby or otherwise the sd monies and expenses

Grant.

As to one part.

To use of A. in severalty.

As to other part.

To use of B. in severalty.

Clause apportioning rent-charge.

togr with the costs of or relating to the distress may be paid and satisfied ; *similar power to B. in respect of other part of rent-charge. If A. and B. are joint tenants, proviso restricting their liability under the statutory covenants for title, Vol. I., p. 384. Acknowledgment and undertaking by A. to C. as to muniments retained by him, Vol. I., p. 391. The like by B. to C. as to those retained by him.* PREC. III.

IN WITNESS, &c.

Two Schedules.

IV.

CONVEYANCE on a PARTITION of FREEHOLDS to a PREC. IV.
 MARRIED WOMAN, a SUM being paid for EQUALITY,
 the LEGAL ESTATE being OUTSTANDING in a trustee.
 VARIATIONS where the WOMAN was MARRIED or her
 TITLE ACCRUED after 1882.

PARTIES, A., surviving trustee of legal estate, 1 ; B., 2 ; C., 3 ; [D. and] E., his wife (a), 4. Recite will of X. devising his real estate to A. and M. in trust for K. for life, and after his death in trust to sell and divide proceeds among his children equally ; death of testator and probate ; deaths of M. and K. AND WHAS the sd K. had issue, three children and no more, namely, the sd B., C., and E., all of whom have attained the age of twenty-one years ; Marriage of E. (b). Recitals.
Family.

(a) If the married woman's title accrued, or if she was married after 1882, As to she can act as a *feme sole* under the Married Women's Property Act, 1882, married and the concurrence of her husband would be unnecessary ; see p. 271, note. women. Otherwise, the case would be governed by the old law, and the husband must join and the wife must acknowledge the deed, although she is not a conveying party, to testify her consent to the partition and her election to take the property unconverted ; see *Franks v. Bollans*, L. R. 3 Ch. Ap. 717.

(b) It should be made to appear whether E. was married after 1882 or not, unless her title accrued after 1882.

PREG. IV. AND WHAS the real este to which the sd testor was entled at the time of his death, consisted of the freehd pieces of land, messuages, and hereds hby granted and certain other freehd hereds situate, &c.; AND WHAS the sd B. and C. and the sd [D. and] E. have resply elected to take the sd hereds and premes as real este discharged from the trust or direction for sale contd in the sd will as afsd, which election is intended to be testified by their respive execution of these presents and of the indres hinafter recited, and they have also agrd to make a partition of the sd premes in mner hinafter mentd, that is to say, that the sd hereds situate at —, which are valued at £—, shall be taken by the sd B. in severalty, and that the sd hereds situate at —, which are valued at £—, shall be taken by the sd C. in severalty, and that the hereds hby granted, which are valued at £—, shall be taken by the sd E. in severalty, and that the sd [D. and] E. shall pay the sum of £— for equality of partition as follows, namely, £— pt thof to the sd B., and £—, residue thof to the sd C.; AND WHAS the sd hereds situate at — are intd to be conveyed to the sd B. in severalty by an indre bearing even date herewith, and expd to be made, &c., and the sd hereds situate at — are intd to be conveyed to the sd C. in severalty by another indre bearing even date herewith and expd to be made, &c.; *Recital introductory to covenant for production of deeds*, Vol. I., p. 341; NOW THIS INDRE WITNETH that in conson of the conveyances intd to be effected by the sd respive indres of even date herewith, and in conson also of the respive sums of £— and £— upon the execution hereof paid to the sd B. and C. resply by the sd [D. and] E., *receipt by B. and C. respectively*, the sd A. as trustee (*see Vol. I., p. 366, note*) doth hby at the request as well of the sd B. and C. as of the sd [D. and] E., grant, and the sd B. and C., each of them conveying as beneficial owner (*see Vol. I., p. 367, note*) of the respive share, este, and interest in the sd premes to which he is entled as hinbefore

Real estate
 belonging
 to testator.
 Election
 not to con-
 vert, and
 agreement.

Convey-
 ances to
 B. and C.

Wit-
 nesses.

Grant.

appears, and all other, if any, his share, este, and interest therein, do resply hby grant and confirm unto the sd E., her hrs and assigns, *Parcels*, Vol. I., p. 344, *omitting general words and estate clause, see Vol. I., pp. 357, 359 notes*; *Habendum*, UNTO AND TO THE USE of the sd E., her hrs and assigns, to the intent that the entirety of the same premes may be henceforth vested in the sd E., her hrs and assigns in severalty. *Statutory acknowledgment and undertaking by B. or C. with E. as to muniments*, Vol. I., p. 892.

PREC. IV.

To use of
married
woman in
fee.

IN WITNESS, &c.

V.

DEED of PARTITION of FREEHOLDS, COPYHOLDS, and LEASEHOLDS. PREC. V.

ONE THIRD belonging to an ABSOLUTE OWNER, another THIRD being in STRICT SETTLEMENT, and the remaining THIRD being vested in TRUSTEES for SALE, with POWER to PARTITION. PART of the PROPERTY having been EXCHANGED. A SUM being paid for EQUALITY. THE MINERALS under part of the FREEHOLDS are EXCEPTED, and EASEMENTS and RIGHTS over one ALLOTMENT are created in favour of another. The PARTITION is effected by MUTUAL CONVEYANCES, operating partly under the SETTLED LAND ACT, 1882. VARIATIONS where the PARTITION is effected by the TRUSTEES of the STRICT SETTLEMENT under an express power (a).

PARTIES: A., owner of one share, 1; B. tenant for life

(a) As to partitions under the Settled Land Act, 1882, see p. 269, note; and as to partitioning under an express power where there is a tenant for life under the Act, see s. 56: and see Vol. I., p. 839, as to the operation of that section. As to the share vested in trustees for sale, E. and F. if there is a

PREC. V. *under strict settlement of another share, 2; C. and D., trustees of that settlement, 3; E. and F., trustees of remaining share, 4; K. 5. Recite will of X. devising the freehold, copyhold, and leasehold hereditaments specified in the first and second schedules, the first part of the third schedule, and the fourth schedule to A., B., and G., as tenants in common or joint tenants; Death and probate; [Three several admittances of A., B., and G. to an undivided third of the copyholds, or as the case may be]; An exchange whereby the hereditaments in the fourth schedule were given in exchange for those in the second part of the third schedule; Strict settlement of B.'s undivided share, under which B. is tenant for life, and C. and D. are trustees of the settlement within the Settled Land Act, 1882. Conveyance of G.'s undivided share to E. and F. in trust for sale with power of partition, with or without the minerals (b). AND WHAS the sd pties hto of the first four pts (other than the sd C. and D.) are desirous of making a partition of the sd hereds described in the sd first, second, and third schedules hto, except as hinafter mentd; such partition being intended to be effected by the sd B. by virtue of the powers vested in him as tenant for life of his undivided share under the Settled Land Act, 1882, and by the sd E. and F. under the powers given to them in that behalf by the sd indre of, &c., the conveyance in trust for sale; AND WHAS in furtherance of such desire a survey and division has been made thof, and the hereds described in the first schedule hto have been set apart as the share to be allotted to the sd A., and held by him, his hrs, exs, ads, and assigns, resp'y, according to the nature and tenure of the ppty, in severalty in lieu and satisfon of his sd undivided*

Recitals.

Desire to make partition.

Allotments.

tenant for life, he may partition under the Act (see s. 63); or if, as in this Precedent, the partition is effected under a power by the trustees, he must consent under s. 56; see Vol. I., p. 840, note, as to the case of trusts for sale. Where the partition is effected under the Act, the land taken on partition must be conveyed to the uses or upon the trusts of the settlement according to s. 24, as to which see Vol. I., p. 856, note.

(b) See note, p. 271.

third pt of the whole of the sd hereds, and the hereds described in the second schedule hto have been set apart as the share to be allotted in severalty to the sd B. and his successors in title, in lieu and satisfson of the undivided third pt of the whole of the sd hereds which is now subjt to the uses of the sd indre, &c., *the strict settlement*, and the hereds described in the third schedule hto have been set apart as the share to be allotted to the sd E. and F., in severalty upon the trusts of the sd indre of, &c., *the conveyance in trust for sale*, in lieu and satisfson of the undivided third pt of the whole of the sd hereds which is now vested in the sd E. and F. in trust as afsd; And it has been agrd that the sd A. should pay the sum of £—— for equality of partition to the sd C. and D.; AND WHAS it has been also agrd that the enjoymt of the easemts and rights described in the fifth schedule hto over the freehd hereds described in the third schedule hto should be secured in mner hinafter appearing to the sd A., his hrs and assigns, the owner or owners, and occupier or occupiers for the time being of the freehd hereds described in the first schedule hto; But it has been agrd that the partition so to be made shall include the surface only of the freehd hereds described in the first schedule hto, and shall not extend to or affect the mines and minerals in, upon, or under the same or any pt thof, [except such stone, clay, brick earth, gravel, sand, and other minerals and substances as can be got by surface working as hinafter mentd]; AND WHAS it has been further agrd that the sd partition shall be effected in mner hinafter appearing; NOW THIS INDRE WITNETH that for effecting the sd partition and in conson of the sum of £—— now paid by the sd A. by the direction of the sd B. to the sd C. and D. the rect, &c. (c), and of the premes the

PREC. V.

Payment
for
equality.
Agreement
as to ease-
ments.

Agreement
as to mine-
rals.

Wit-
nesseth.

(c) If the partition is effected by the trustees of the strict settlement under an express power, and they have no estate, the conveyance of the freeholds must be by revocation and appointment of the use, the tenant for life, if any, being a necessary consenting party under the Settled Land Act, 1882, s. 56. In that case the deed will continue from this point as follows :—

“ And of the assurances intd to be hby made by the sd A.

Variations
for par-
titions by
trustees.

PREC. V. sd A. as beneficial owner (*d*), as to one equal third share and all other, if any, the share, este, or interest to which he is entled of and in the freehd hereds hby assured doth hby grant and the sd B. as beneficial owner (*d*) as to one equal third share, and all other, if any, the share, este, or interest comprd in the sd indre of settlmt of, &c., of and in the same hereds by virtue of the powers of the Settled Land Act,

and by the sd E. and F. respby and of the premes, the sd C. and D. as trees (*d*), in exercise of the power for this ppose given to them by the sd indre of, &c., *the strict settlement*, and of every other power enabling them in this behalf [and with the consent of the sd B.], do hby absolutely revoke ALL the uses, trusts, powers, and provons in and by the sd indre of, &c., decl'd and contd concerning the one third pt or other the share, este or interest therein comprd of and in ALL and singular the — and hereds of freehd tenure described or comprd in the first, second, and third schedules hto, except as to the mines and minerals in, upon, or under the freehd hereds and premes described or comprd in the first schedule hto, or any pt thof [other than such stone, clay, &c., *as in the text*], AND do hby direct and appoint that the same one third pt or other share, este, or interest of and in all the sd freehd hereds and premes, except as afsd, shall henceforth go and remain To THE USES, upon the trusts, and subj't to the powers and provons hinafter expd concerning the same respby; AND THIS INDRE ALSO WITNETH that for further effecting the sd partition, and in conson of the premes the sd A. as beneficial owner as to one equal third share, &c., *as in the text*, and the sd B. as beneficial owner (*d*), for the ppose of implying the statutory covenants for title and further assurance as to one equal third share, and all other the share, &c., *comprised in the settlement*, doth hby grant and convey, and the sd E. and F., &c., *as in the text*."

Revocation
of uses of
settlement.

Exception
of mine-
rals.

New
appoint-
ment.

To uses
after de-
clared.

Further
witnesseth.

Grant.

(*d*) As to the covenants for title. &c., implied here and subsequently in this Precedent by the words "as beneficial owner," see Vol I., p. 365, note; and as to the covenant to surrender copyholds, see Vol. I., p. 368, note; and as to the covenant against incumbrances implied by the words "as trustees," see Vol. I., p. 368, note.

1882, and of every other power in that behalf him enabling doth hby grant and convey, and the sd E. and F. as trees as to the remaining one equal third share, and all other, if any, the share, este, or interest comprd in the sd indre of, &c., *the conveyance in trust for sale*, of and in the same hereds, by virtue of the powers given to them by the last mentd indre, and of every other power enabling them in this behalf, do hby grant and convey unto the sd K. and his hrs, ALL AND SINGULAR the — and hereds described or comprd in the first, second, and third schedules hto which are of freehd tenure; *omitting general words and estate clause, see Vol. I. pp. 857, 859 notes*; BUT EXCEPT reserved out of the assurance and partition intd to be hby made, all mines and minerals in, upon, or under such of the sd freehd hereds and premes as are described or comprd in the first schedule hto, or any pt thof, [other than such stone, clay, brick earth, gravel, sand and other minerals and substances as can be got by quarrying or surface workings without underground workings :] To HOLD all the sd premes hinbefore granted and conveyed UNTO the sd K. and his hrs, To THE USES, upon the trusts, and subjt to the powers and provons hinafter expd concerning the same resply, that is to say, As to and concerning the entirety of such of the sd freehd premes as are described or comprd in the first schedule hto, except as afsd, To THE USE of the sd A., his hrs and assigns, to be henceforth held by him and them in severalty, AND AS TO and concerning the entirety of such of the sd freehd premes as are described or comprd in the second schedule hto, To THE USES, upon the trusts, and subjt to the powers and provons which under the sd indre of, &c., *the strict settlement*, or by reason of the exercise of any power of charging therein contd are subsisting with respect to the sd undivided third pt or other share therein comprd of and in all the sd freehd premes, or as near thto as circes permit, but not so as to increase or multiply charges or powers of charging (e), and to be henceforth held in

PREC. V.

Grant.

Freeholds.

Exception
of mine-
rals.Haben-
dum.

To uses.

As to part.

To absolute
owner.As to other
part.To uses
of strict
settlement.

(e) As to this form, see Vol. I., pp. 856, 858, note.

PREQ. V. severalty accordingly, AND AS TO and concerning the entirety of such of the sd freehd premes as are described and comprd in the sd third schedule hto, To THE USE that the sd A., his hrs and assigns, the owner or owners, and occupier or occupiers of the sd freehd hereds described in the first schedule hto, shall at all times hereafter have, use and enjoy the easemts and rights specified in the fifth schedule hto over the freehd hereds described and comprd in the third schedule hto, and subj thto, To THE USE of the sd E. and F., their hrs and assigns, UPON the trusts, &c., *of the conveyance in trust for sale, as above:* AND THIS INDRE ALSO WITNETH that for further effecting the sd partition (*f*), the sd A., so far only as relates to, and as beneficial owner of the one equal third share, and all other, if any, the share or interest which is vested in him of and in the copyhd hereds hby assured doth hby covenant with the sd B. and his successors in title and also separately with the sd E. and F., their hrs and assigns, that he, the sd A., or his hrs and all other necessary pties, if any, will forthwith, at the costs of the respive psons for whose benefit the respive surrenders are made, surrender into the hands of the lórd's of the manors of which the copyhd hereds hinafter mentd are resply holden according to the custom thof resply, and the sd B. as beneficial owner as to one equal third share of the sd copyhd hereds and all other, if any, the share, &c., *comprised in the settlement*, and by virtue of the powers, &c., *as above*, doth hby convey (*a*),

As to other part.

To use of trustees for sale.

Further witnesseth.

Covenant to surrender.

Variation for partition under power.

(*f*) Where the partition of the settled share is made under an express power vested in the trustees C. and D., the clause in the text will be modified as to that share by making C. and D. covenant "as trustees" with A. and with E. and F. to surrender, each of the parties being in that case made to covenant with the others, "that they, the sd respive covenanting pties, and all other necessary pties, if any, will forthwith, at the cost of the respive psons for whose benefit the respive surrenders are to be made, surrender, &c."

(*a*) See Vol. I., p. 852, note. The amalgamation of the covenants to surrender as to two thirds with the statutory conveyance of the remaining third, as in the text, seems substantially free from objection.

and the sd E. and F. as trees as to the one equal third share, and all other the share, &c., *comprised in the conveyance*, do hby covenant with the sd A., his hrs and assigns, and also separately with the sd B. and his successors in title, that they, the sd E. and F., or their hrs and all other necessary pties, if any, will forthwith, at the costs, &c., surrender, &c., ALL AND SINGULAR the — and hereds described or comprd in the first, second, and third schedules hto, which are of copyhd tenure: To the uses following, that is to say, As to the entirety of the — and hereds specified in the first schedule hto which are of copyhd tenure, To the use of the sd A., his hrs and assigns, according to the custom of the manor of which the same are held, and by and under the rents, fines, suits, and services due and accustomed for the same, and so that the same shall henceforth be held in severalty accordingly, AND AS TO the entirety, &c., *as above of copyholds in second schedule to the use of C. and D., adding,* “UPON TRUSTS and subjt to powers and provons corresponding as nearly as the law and circes permit with the uses, trusts, powers, and provons to, on, and subjt to which the freehd hereds comprd in the second schedule hto are hinbefore conveyed or assured and so that the entirety of the sd copyhd premes comprd in the sd second schedule shall henceforth be held in severalty accordingly:” AND AS TO, &c., *similar declaration of uses, &c., as to copyholds in third schedule in favour of E. and F.:* AND the sd resptive covenanting pties do hby resply declare that in the meantime and until the sd several surrenders shall be made by them resply pursuant to the covenants hinbefore contd, they the sd covenanting pties resply and their resptive heirs will stand possessed of the sd resptive copyhd premes hinbefore covenanted to be surrendered in trust for the resptive psns in whose favour the same premes are resply covenanted to be surrendered: AND THIS INDRE ALSO

PRINC. V.

To uses.

As to part.

To use of absolute owner.

As to other part.

To use of trustees of strict settlement (b).

As to other part to trustees for sale.

Declaration of trust till surrender.

Further witnesseth.

(b) See Vol. I., pp. 856, 858, note.

PREC. V. WITNETH that for further effecting the sd partition and in conson, &c., the sd B. as beneficial owner as to one equal third share and all other if any the share, &c., *comprised in the settlement*, of the leasehd hereds next hinafter mentd and by virtue, &c., *as above*, doth hby assign and convey (d), and the sd E. and F. as trees as to one equal third share and all other, &c., and by virtue, &c., *as above*, do hby assign unto the sd A. (e), his exs, ads, and assigns, ALL THOSE the two several undivided third pts or shares and all other if any the pts shares and interests comprd in the sd respive indres of, &c., *the settlement and conveyance*, of and in all such of the sd — and hereds described or comprd in the sd first schedule hto as are of leasehd tenure; *Habendum to A., subject to rent and covenants, Vol. I. p. 862*, to the intent that the entirety of the same premes shall henceforth be held by him and them in severalty accordingly (f); AND THIS INDRE FURTHER WITNETH that for further effecting the sd partition and in conson, &c., the sd A. as beneficial owner as to one equal third share and all other, if any, the share, &c., to which he is entled of and in the leasehd hereds next hinafter mentd, doth hby by the

Assign-
ment.

Leaseholds
in first
schedule.

Further
witnesseth.

(d) If the partition is made under an express power, the assignment of the share in settlement will be made by the trustees C. and D. in the same form as the assignment by E. and F., the tenant for life, if any, joining, if desired, to imply covenants for title as in the case of the freeholds.

(e) It may sometimes, in a case like the present, be convenient that the freeholds and leaseholds should be conveyed to K., as a provisional trustee, upon trust to re-convey each lot to the person to whom it is allotted, see APPOINTMENTS OF NEW TRUSTEES, Prec. XII., Vol. I., p. 135. The re-conveyance would be in the form of Prec. XIII., Vol. I., p. 138, *mutatis mutandis*, and the covenants, express or statutory, for title and production would be entered into with K.

(f) In the present case it is assumed that the leaseholds in the different schedules are held under separate leases. If they are held under the same lease, and are divided equally, each habendum must be made "subjt to the paymt of one equal third pt of the sd rent of £—, and to the covenants by the lessee and condons contd in the sd indre of lease so far as the sd covenants and condons relate to the sd premes comprd in the — schedule hto."

direction of the sd B. assign, and the sd E. and F. as trees PRINC. V.
 as to the one equal third share and all other, &c., and by
 virtue, &c., as above, do hereby by the direction of the sd B.
 assign unto the sd C. and D. their exs, ads, and assigns, &c., Assign-
 ment of
 other lease-
 holds.
*leaseholds in second schedule, habendum to C. and D. subject to
 rent and covenants, upon trusts, &c., as in the case of the
 copyholds, adding if appropriate, "but so, nevertheless, that
 the beneficial interest in the same premes shall not vest
 absolutely in any person who is by the sd settlement made
 by purchase, tenant in tail, or in tail male, or in tail female, as
 the case may be, and who dies under the age of twenty-one
 years, but shall on the death of such person under that age go
 as freehold hereditaments conveyed to the uses aforesaid would go" (g).*
*Similar assignment to E. and F., of leaseholds in third
 schedule, UPON SUCH TRUSTS, &c., as above, mutatis mutandis.*
*Clause restricting B.'s liability under implied covenants for
 title, Vol. I., p. 385 (a). Covenant by A. with C. and D. and* Covenants
 for pay-

(g) See the Settled Land Act, 1882, s. 24 ; Vol. I., p. 856, note, 859.

(a) If express covenants for title by A. and B. were inserted, they might Form of
 express
 covenants
 for title.
 run as follows : " And each of them the sd A. and B., so far as
 regards the acts and defaults of himself and the sd X., the
 testator, and of persons claiming under or in trust for them
 respectively, but not for the acts and defaults of the others of
 them, the sd covenanting parties, or of persons claiming under
 or in trust for them, and so that the liability of the sd respective
 covenanting parties under this present covenant shall be
 limited to one equal third share only of and in the sd freehold,
 copyhold, and leasehold premes comprised in the sd first, second,
 and third schedules hereto, and so that the benefit of this
 covenant as regards all the hereditaments and premes comprised in
 the first schedule hereto shall enure to the sd A., his heirs, exors, admors,
 and assigns, and that the benefit thereof as regards all the
 hereditaments and premes comprised in the second schedule hereto shall
 enure to the sd C. and D., their heirs, exors, admors, and assigns,
 and the benefit thereof as regards all the hereditaments and premes
 comprised in the third schedule hereto shall enure to the sd E.
 and F., their heirs, exors, admors, and assigns, covenant with the sd

PREC. V.
ment of
rent, &c.

Mines to
belong to
persons
now en-
titled.

also separately with E. and F. to pay rent, &c., as to leases affecting property in the first schedule, Vol. I., p. 393, mutatis mutandis; similar covenants by C. and D. as to leases in second schedule, and by E. and F. as to leases in third schedule, and if desired a covenant by B. for indemnity of C. and D. Vol. I., p. 394, note (g) (b): PROVID ALWAYS, and it is hereby agreed and decided that all the mines and minerals in, upon, or under such of the said hereditaments and premises specified in the first schedule hereto as are of freehold tenure [other than such surface stone, minerals, and substances as aforesaid] shall continue to be held and enjoyed by the persons interested therein in the same manner as if the partition intended to be hereby effected had not been made (c).

IN WITNESS, &c.

Five Schedules.

A., his heirs, executors, administrators, and assigns, and also separately with the said C. and D., their heirs, executors, administrators, and assigns, and also separately with the said E. and F., their heirs, executors, administrators, and assigns, *continue covenants for title, Vol. I., p. 376, form V., mutatis mutandis, and with the modification for several covenanting parties, see p. 375, form III., omitting the covenants that lease is good and that rent and covenants have been paid and performed."*

(b) If one lease is allotted equally, substitute for these covenants a covenant by A. with C. and D., and E. and F., "that he, the said A., his executors, &c., will henceforth during the said term pay one equal third part of the rent reserved by the said lease, and perform and observe the covenants henceforth to be performed and observed in respect of such of the said premises thereby demised as are specified in the first schedule hereto," and similar covenants by C. and D. as to leaseholds in the 2nd schedule, and by E. and F. as to leaseholds in the 3rd schedule.

(c) The partition deed may be executed in triplicate, otherwise the party who retains it must give the usual acknowledgment and undertaking to the other parties. One or more acknowledgments and undertakings as to the other muniments of title retained by the respective parties will also probably be required.

PARTNERSHIP (a).

CLAUSES (b).

I. THE SD A. and B. will become and remain ptners in the trade, *or*, "profession," or business of —, [in continuation of the business carried on for many years by the sd A.] from the — day of —, during the term of — years [*or, if for life*, during their joint lives] under the style or firm of — [subjt nevertheless to determination as hinafter provd].

Duration and style of partnership for two partners.

II. THE SD A., B., C., and D., and the survors of them, will become and remain ptners in the trade, *or*, "profession," or business of — [in continuation of the business carried on for many years by the sd A. and B.], from the — day of —, during the term of — years, if they or any two or more of them shall so long live, [*or, if for life*, during so long as they or any two or more of them shall live] under the style or firm of — [subjt nevertheless to determination as hinafter provd].

The same for three or more partners.

III. ANY PTNER may determine [retire from] the ptnship on or at any time after the — day of —, 18—, on giving not less than six calendar months' previous notice in writing to the other ptners of his intention in that behalf, or leaving such notice at the counting-house, *or*, "office," of the ptnship,

Power to determine partnership by notice.

(a) See 5 Dav. Prec., p. 303; Lindley on Partnership; Pollock on Partnership.

(b) The forms under this head are, for the most part, adapted to a partnership between three or more; the alterations for two partners will be obvious.

and at the expiration of such notice the ptnship shall determine accordingly [so far as regards the ptner giving or leaving such notice].

Power to
determine
partner-
ship as to
one part-
ner (c).

IV. THE SD A. and B., or such one of them as shall for the time being remain a ptner, may at any time terminate the sd ptnship so far as regards the sd C. on giving to him not less than — calendar months' notice in writing, or leaving such notice at the counting-house, or, "office," of the ptnship, [or on paying him the sum of £—— in lieu of such notice,] in which case the ptnship shall, as regards the sd C., absolutely cease and determine on the expiration of such notice, [or on the paymt of such sum, as the case may be,] [and the sd C. shall have the like right of terminating the sd ptnship as regards himself, on giving the like notice to the sd A. and B., or such one of them as shall for the time being remain a ptner, or leaving such notice at the sd counting-house, or, "office."]

Death, &c.,
of one
partner
not to dis-
solve part-
nership.

Place of
business.
Capital.

V. THE DEATH [or retiremt] of any ptner shall not dissolve the ptnship between the remaining ptners.

VI. THE BUSINESS of the ptnship shall be carried on at —, or at such other place as the ptners shall from time to time determine.

VII. THE CAPITAL of the ptnship shall be the sum of £——, to be contributed by the sd ptners in equal shares, or, "in the shares or proportions following, namely, the sum of £—— by the sd A., the sum of £—— by the sd B., and the sum of £—— by the sd C.," or, "in the shares or proportions in which they are to share in the profits, as hinafter mentd," or in such other shares as may from time to time be agrd on between them.

Capital
where no
amount
fixed.

VIII. THE CAPITAL of the ptnship shall consist of such sum or sums of money as shall from time to time be required for carrying on the sd business with advantage, and shall be contributed, &c., *as in last form*.

Increase of
capital.

IX. IF AT any time or times hereafter it shall be deter-

mined [by a majority of the ptners] to increase the capital, the additional capital required shall, unless otherwise agrd, be advanced by the ptners [for the time being] in equal shares [in the proportions in which they shall then be resp'y entled to the net profits of the sd business].

X. IF ANY ptner shall, with the consent of the [majority of the] other ptners, bring in additional capital, or leave in the business as capital any pt of the net profits carried to his credit at any annual general account, the same shall be considered as a debt due to him from the ptnship, and shall bear interest after the rate of — per cent. per annum, payable half-yearly, but such additional capital shall not be drawn out by him without giving — calendar months' written notice of his intention so to do to the other ptners, or leaving such notice at the counting-house, or, "office," of the ptnship, and he shall be bound to draw out the same on a like notice being given to him by the other ptners, or left as afd, and at the expiration of such last-mentd notice interest shall cease to be payable thereon.

Additional capital to be brought in by any one partner.

XI. EACH PTNER shall be credited in the books of the ptnship with interest at the rate of — per cent. per annum on his share of the capital for the time being, [or, on the excess of his capital for the time being over and above the sum of £—,] inclusive of any further capital which may hereafter be brought in by him with the consent of the other ptners, and such interest shall be paid to him on the — day of — in every year before any division of profits is made.

Interest on capital.

XII. EACH PTNER shall be credited in his capital account with the ptnership with the amount or value of the capital originally or subsequently contributed by him as at the date of the same being so contributed, and each ptner shall be entled to interest at the rate of — per cent. per annum on the sum from time to time standing to his credit in his capital account with the ptnship, such interest to be considered as payable quarterly on the usual quarter days, and

The same, another form.

such capital and interest shall be deemed to be a debt due from the ptnship.

One partner to be credited with value of stock-in-trade, &c, as part of his capital.

XIII. THE STOCK in trade and plant belonging to the sd business at the commencement of the ptnship [the parlars whof are entered in the books of the sd business] shall be valued by a competent valuer, [shall be taken to be of the value of £——], and shall become the ppty of the ptnship, and the value thof shall be credited to the sd A. in the books of the firm as pt of the capital brought in by him.

Lease of business premises vested in one partner to be held in trust for firm.

XIV. THE SD A., by whom the house and offices in which the sd business is carried on are held for the residue of the term of —— years from the —— day of ——, granted by an indre of lease dated, &c., at a rent of, &c., shall stand possessed thof in trust for the firm, and shall be indemnified by the firm against such rent, and the covenants and condons contd in the sd lease, and the sum of £—— being the estimated or agreed value of the sd lease shall be credited to the sd A. in the books of the ptnship as pt of his capital therein.

Provision for house of business and office furniture remaining property of one partner, subject to the user thereof by the firm at a rent.

XV. THE [LEASE of the] house, offices, and buildings at ——, in which the sd business is now carried on, and the office furniture and fittings therein, which are resply the ppty of the sd A., shall so remain, but the sd ptnship shall have the right of retaining the sd house, offices, and buildings, furniture and fittings, for the pposes of the sd business during so long as the ptners for the time being shall think fit, and shall during such period pay [the rent reserved by the lease under which the sd A. holds the sd house and premes, and] all rates, taxes, and expenses payable in respect thof, and shall pay an [additional] rent of £—— per annum to the sd A., his exs, ads, and assigns, for the use of the sd house, offices, furniture and premes.

Employment of capital.

XVI. THE SD capital, and the rects and earnings of the sd business, including the premium paid for any apprentice [articled clerk] taken by any ptner, shall be employed in the sd business.

Bankers.

XVII. THE BANKERS of the ptnship shall be Messrs.

—, or such other bankers as the [majority of the] ptners shall from time to time determine, and all monies [and secs] belonging to the ptnship, except such monies as are required for current expenses, shall be paid into [and deposited with] the sd bank.

XVIII. ALL MONIES which shall from time to time be received by the ptners or any of them for or on account of the ptnship shall be immediately paid to the bankers for the time being of the ptnship in the same drafts, cheques, bills, or cash in which the same are received, and all disbursements for or on account of the ptnship shall invariably be made by draft on such bankers or through the medium of the cash clerk of the ptnship. Provision as to monies received and paid on account of partnership.

XIX. THE RENT of, and expenses of repairs, alterations, and improvements of any houses, buildings, or offices from time to time belonging to or used for the purposes of the sd business, and all rates, taxes, assessments, expenses of insurance against fire, and other outgoings for or in respect of the same, and the salaries and wages [and maintenance] of all clerks, travellers, apprentices, and persons employed in the sd business, and all expenses, losses, and damages which shall be incurred in carrying on the same or in anywise relating thereto, and the interest on the capital payable to the respective ptners, shall be paid out of the receipts and earnings of the sd business, and in case of deficiency thereof then by the sd ptners in equal shares [in the shares in which they shall for the time being be entitled to the net profits of the sd business]. Outgoings.

XX. THE PTNERS shall be entitled to the net profits of the sd business in equal shares [in the shares following, that is to say, the sd A. to two equal third parts thereof, and each of them the sd B. and C. to one equal sixth part thereof,] and the net profits shall be divided between the ptners as soon after the end of each year of the ptnship as the general annual account shall have been taken and settled as hereinafter provided. Profits.

XXI. PROVIDED ALWAYS that in case the share of the sd C. in the sd net profits shall in any year or years be less than Minimum sum guaranteed.

£——, such share shall in any or every such year be made up to £—— by the other ptners or ptner, the amount required for that ppose to be contributed by such other ptners if more than one in the shares in which they shall be entled to share in the sd net profits.

Option to one partner to purchase a further share of the business. XXII. THE SD C. shall have the option, to be signified to the other ptners or ptner on or before the —— day of ——, of pchasing a further share not exceeding one —— share of the sd business and the net profits thof, as from such day, at a price to be —— years' pchase calculated on an average of such net profits from the commencemt of the sd ptnship up to the then last general annual account, and the sum so paid shall be divided between the sd A. and B. in the shares following, &c., and after such pchase the share of [the sd C. in the net profits shall be increased by the addition of the further share pchased by him, and the shares of the sd A. and B. in the net profits shall be correspondingly reduced, but so that their shares shall continue to bear the same proportion to each other as their original shares.

Drawings. XXIII. THE SD ptners shall be at liberty by monthly drawings or otherwise to draw out of the sd business in anticipation of their respive shares of profits, and to be accounted for at the next yearly [half-yearly] division of profits, the following sums, namely, the sd A. a sum not exceeding £—— during any quarter of a year, the sd B. a sum not exceeding £—— in any quarter, and the sd C. a sum not exceeding £—— in any quarter, but in case in any year [half-year] the amount so drawn out by any ptner shall, on taking the general account, be found to be in excess of his share of the net profits, then immediately after such account shall have been taken and settled the excess so drawn out shall be refunded.

Surplus profits above authorised drawings to be capitalized. XXIV. If the share of any ptner in the net profits for any year as ascertained upon taking the annual general account shall exceed the amount which he shall be for the time being authorised to draw out during that year as provd by the last preceding clause (whether actually drawn out or not), the

surplus of such share over and above the amount so authorised to be drawn out shall be retained and added to his share in the capital of the ptnship until the total capital shall amount to the sum of £——, and each ptner shall be entled to receive interest at the rate of —— per cent. per annum on the sums so retained and carried to his credit as capital.

XXV. THE SD K. shall not be required to [and shall not] ^{Sleeping partner.} interfere with the carrying on, managemt, or conduct of the sd business, and shall not sign the name of the firm.

XXVI. THE SD A. shall reside at the sd dwelling-house at ^{As to residence.} ——, where the sd business is to be carried on, free of rent, rates, taxes, assessmts, and expenses of insurance, which shall be paid out of the assets of the firm, provd that he shall, on giving three calendar months' notice in writing to the other ptners, be at liberty to lodge out of the sd house, and in such case shall be allowed the annual sum of £—— out of the assets of the firm in lieu of such lodging.

XXVII. EACH PTNER [other than the sd K., *sleeping partner*], shall, at all times during the ptnship, devote the whole of his time and attention to the sd ptnship business, and diligently and faithfully employ himself therein, and carry on the same for the greatest advantage of the ptnship; *if desired, insert provisions as to holidays.* ^{Attention to business.}

XXVIII. *C. to give whole time, &c., as in last clause.* The sd B. shall give such an amount of supervision and attention to the sd business as may be necessary for the efficient managemt thof, and except to that extent shall not be bound to personal attendance or participation therein, but the sd A. shall not be obliged to attend to the sd business any further than he shall think proper, [but in case he shall cease altogether to take any active part therein, then and from thenceforth he shall give up one equal —— share of the net profits thof, which shall accrue to the other ptners or ptner, and if there shall be more than one shall be divided between them in proportion to their original shares therein, and the sd A. shall thenceforth be in the position of a sleeping ptner in the sd business]. ^{The same, when some partners not to be bound to attend to business.}

One partner to be manager at a salary. **XXIX.** THE SD B. shall be the manager of the sd business and shall be entitled to be paid for his services as such manager the annual sum of £—— before any division of profits, and in addition to his share of profits, by equal quarterly paymts, the first paymt to be made on the —— day of ——.

Not to engage in any other business. **XXX.** No PTNER shall during the continuance of the ptnship carry on or be concerned or interested directly or indirectly in the business of —— except on account and for the benefit of the ptnship, and no ptner [except the sd A.] shall engage in, or undertake any other trade, business, or manufacture [or become a director of any joint stock co], without the consent in writing of the other ptners or ptner.

Cheques. **XXXI.** ALL CHEQUES, bills, and other writings, pledging the credit, or affecting the ppty of the ptnship, shall be signed by the sd A. or B., and not otherwise.

Not to pledge credit of firm. **XXXII.** No PTNER shall, without the consent of the other ptners or ptner, draw, accept, or sign any bill of exchange or promissory note, or contract any debt on account of the ptnship, or employ any of the monies or effects thof, or in any manner pledge the credit thof, except in the usual and regular course of business.

Power to expel partner pledging credit improperly. **XXXIII.** No BILL, promissory note, bond, or other secy, shall be signed, drawn, endorsed, or negotiated by any ptner in the name or on behalf of the firm, other than the *bond fide* bills, notes, or secs of the firm, and which shall have been regularly recorded in the books thof, and any infraction of this clause shall be a ground for an immediate dissolution of the ptnship as regards the ptner so offending, and on proof of such offence, the other ptners shall be at liberty forthwith to declare the same dissolved accordingly by a written notice given to the offending ptner or left for him at the office of the firm, and to sign a dissolution of the ptnship in the name of and against such ptner, and to gazette the same, referring to this clause as their authority for so doing, and it shall be lawful for the ptners to pay out the capital of the offending ptner as it stood at the last

preceding general account, without any addition thto for subsequently accruing profits, and he shall thereupon cease to have any interest in the ptnship.

xxxiv. No PTNER shall lend any money or give credit to or have any dealings on behalf of the ptnship with any pson, co, or corporation whom the other ptners or ptner shall previously have forbidden him to trust or deal with, and if he shall act contrary to this article he shall repay to the ptnship any loss which may have been incurred thby. Not to give credit when forbidden.

xxxv. No PTNER shall buy, order, or contract for any goods or article exceeding the value of £—— without the previous consent in writing of the other ptners or ptner, and in the event of any ptner so doing the other ptners or ptner shall have the option either to take the goods or articles so bought, ordered, or contracted for, on behalf of the ptnship, or to let the same remain and be for the separate use of the ptner so buying, ordering, or contracting, in which case he shall pay for the same out of his own monies. No contract to exceed a certain amount.

xxxvi. No PTNER shall hire or dismiss, except in case of gross misconduct, any clerk [traveller] or person in the employmt of the ptnship, or take any apprentice [articled clerk], without the consent of the other ptners or ptner. Hiring clerks, &c.

xxxvii. No PTNER shall, without the previous consent in writing of the other ptners or ptner, become bail, surety, or secy, for any pson [or subscribe any policy of insurance]. Not to become surety, &c.

xxxviii. EACH PTNER shall be just and faithful to the other ptners or ptner in all transactions relating to the business of the ptnship, and shall give a true account of the same to them when and so often as the same shall be reasonably required. To be just.

xxxix. EACH PTNER shall, upon every reasble request, inform the other ptners or ptner of all letters, accounts, writings, and other things which shall come to his hands or knowledge concerning the business of the ptnship. To give information.

xl. No PTNER shall take or go any journey or voyage on account of the firm without the consent of the other ptners or ptner [and in the event of any ptner so doing he shall Journeys.

forfeit the sum of £——, to be forthwith paid by him to the other ptners in equal shares ; and if any ptnr shall at any time take or go any voyage or journey on account of the firm, with such consent, he shall be allowed his reasble expenses of travelling and subsistence during such voyage or journey].

Not to cause the property of the firm to be taken in execution. **XLII.** No PTNER shall do or knowingly suffer anything whby the ppty of the ptnship may be seized, attached, or taken in execution.

Each partner to pay his private debts. **XLIII.** EACH PTNER shall punctually pay and discharge his present and future separate debts and engagements, and shall at all times keep indemnified the other ptners or ptnr, and their or his representatives, and the ppty of the ptnship, against the same, and all actions, proceedings, claims, and demands, in respect thof.

Not to assign share. **XLIV.** No PTNER shall, without the previous consent in writing of the other ptners or ptnr, assign his share or interest in the ptnship [except that any ptnr may introduce a son or nephew into the firm, and assign the whole or any pt of his share to him as hinafter provd].

Not to assign share without giving option of purchase to other partners. **XLV.** ANY PTNER shall be at liberty to sell his share in the ptnship, provd he shall previously have offered such share to the other ptners or ptnr upon the same terms, and they or he shall have refused or neglected for one calendar month to accept such offer.

Not to compound debts. **XLVI.** No PTNER shall, without the consent of the other ptners or ptnr, compound, release, or discharge any debt which shall be due or owing to the ptnship, without receiving the full amount thof.

Accounts to be kept. **XLVII.** PROPER BOOKS of account shall be kept by the sd ptners, and entries made therein of all such matters, transactions, and things, as are usually entered in books of account kept by psons engaged in concerns of a similar nature, [and the same shall be posted up under the personal superintendence of ——]; The sd books of account, and all letters, papers, and documts belonging to the ptnship [except such as are to be kept at the bankers] shall be kept at the

counting-house, *or*, "office," of the ptnship, and each ptner shall at all times have free access to examine and copy the same.

XLVII. On the — day of —, 18—, and on every subsequent — day of —, a general account shall be taken of the assets and liabilities of the ptnship, and of all dealings and transactions of the ptnship during the then preceding year [or, in the case of the first of such accounts, since the commencement of the ptnship,] and of all matters and things usually comprehended in accounts of a like nature, taken by psons engaged in a like business, and in taking such account a just valuation shall be made of all items requiring valuation: Such general account shall be entered in a book, which shall be signed by all the ptners, and when so signed shall be binding on them, save that if any manifest error shall be found therein, and signified by any ptner to the other ptners within — calendar months after such signature the same shall be rectified.

Annual
general
account.

XLVIII. UPON THE determination of the ptnship a full and general account of the assets, liabilities, and transactions of the ptnship shall be taken, and the assets and ppty thof shall with all convenient speed be realised and sold, and the debts due to the ptnship got in, and the proceeds shall be applied in discharge of the liabilities of the ptnship, and the expenses of liquidating the same, and realising the assets thof, and in the next place, in paymt to each ptner, or his representatives, of any unpaid interest or profits coming to him, and of his share of the capital, and the surplus, if any, of the monies realised as afsd shall be divided between the ptners or their representatives in equal shares [in the shares in which the partners shall be entled to the net profits of the sd business], and the partners, or their representatives shall execute such instrumts for facilitating and effecting the realisation and division of the assets of the ptnship, and for their mutual indemnity and release and otherwise as may be requisite or proper: [Provid that in case the monies realised as afsd shall not be suffi-

Ordinary
provision
for winding
up on dis-
solution.

cient to pay in full the respive shares of the ptners or their representatives in the sd capital, the same shall be paid rateably as far as such monies will extend, and no ptner or his representatives shall have any claim against the others or other of them, or their or his representatives, in respect of such deficiency].

Another form, where the assets may be of a complex character, providing for the division in specie.

XLIX. UPON THE determination of the ptnship an account shall be taken of the assets and liabilities thof, and a valuation shall be made of all such items in such account as require and admit of valuation, and upon the completion of such account and valuation the ptners, or their representatives, shall forthwith make due provon for the satisfon of the liabilities of the ptnship, and of the costs of liquidating the same [and subjt thto the assets [including the good-will] of the ptnship shall be divided into shares of equal value, and one of such shares shall be allotted to and become the sole ppty of each ptner or his representatives], [or, and subjt thto such pt of the assets of the ptnship as shall be equal in value to the capital then belonging to each ptner shall be allotted to him or his representatives as his or their sole ppty, and the residue (if any) of the sd assets shall be divided between and allotted to the ptners or their representatives in the shares in which the ptners shall be entled to the net profits]: Provd that if it shall be so decided by a majority of the ptners, and for this ppose the representatives of a deceased ptner shall be substituted for him, any pt of the assets may be carried to a suspense account to meet any contingent or unascertained liabilities of the ptnship; Provd also that all such instrumts or assurances as may be requisite or proper shall be executed by the ptners or their representatives for facilitating the getting in of the outstanding assets, and for vesting the sole right of ppty therein in any pson or psons to whom the same shall be allotted, and for enabling him or them to recover the same, and for securing the discharge of the outstanding liabilities by the pson or psons who shall undertake such discharge, and indemnifying the ptners or their

representatives touching the premes, and for releasing each other from all claims on account of the ptnship.

L. IF THE ptnship shall expire by effluxion of time, the sd A. shall have the option, to be signified in writing to the other ptners or ptner not more than — nor less than — calendar months before the expiration thof, to succeed to the whole of the sd business : And if the sd A. shall so signify his election not to succeed thto, or shall fail within the time afsd so to signify his election to succeed thto, then the sd B. shall have the like option, to be signified in like mner, not less than — calendar months before the expiration of the ptnship : And in the event of his electing within such time not to succeed to the sd business, or failing to signify his election in mner afsd, then the sd C. shall have the like option to be signified in like mner before the expiration of the ptnship : And in case any ptner shall elect to succeed to the sd business, as afsd, a general account and valuation shall be taken and made at the expiration of the ptnship, at the expense of the ptnship, of the assets and liabilities thof [including the estimated value of the good-will] : And the ptner entled to succeed to the sd business shall pay to the others or other of them resply the sum which, on taking such account, shall appear to be the value of their or his shares or share resply of the capital, [good-will], interest, and profits, after making provon for all the liabilities of the ptnship, which resptive sums shall as one aggregate amount, bearing interest at the rate of — per cent. per annum from the expiration of the ptnship, be pd by such ptner as soon as conveniently may be, and at latest within six calendar months from the expiration of the ptnship, to the outgoing ptners or ptner ; And the whole of the assets [and good-will] of the ptnship shall, as from such expiration, become the sole ppty of the ptner entled to succeed to the sd business, who shall provide for and indemnify the other ptners or ptner against all the outstanding liabilities of the ptnship on that day, and such assurances and instrumts shall be executed by the ptners at their joint expense as shall be necessary for

Dissolu-
tion, the
partners to
have op-
tion in
succession
to succeed
to the
whole
business.

vesting in the succeeding ptner all the assets of the ptnship, and for indemnifying the outgoing ptners or ptner against the liabilities of the ptnship, and for releasing each other touching the premes, and from all claims on account of the ptnship.

Provision
for death,
or retire-
ment, of
partner,
where his
capital is
to be paid
out to him,
or his re-
presenta-
tives.

LI. IF ANY ptner shall die [or retire] before the expiration of the ptnship, [such ptner, or] his representatives shall be entled to his share in the capital of the ptnship with interest to his death, and to any profits which shall have become payable, but shall not have been actually paid to him ; and also if he die [or retire] on the day for taking the annual general account, to his share of profits as ascertained on taking such account ; and if he die [or retire] on any other day to an allowance in lieu of profits at the rate of — per cent. per annum (*d*) on his share in the sd capital up to the day of his death [or retiremt], to be calculated, if he shall die [or retire] before the — day of —, *the first day for taking the annual account*, from the commencemt of the ptnship, but if he shall die [or retire] after that day, then from the last day for taking the annual general account ; and the representatives of such deceased ptner, [or such retiring ptner], shall be bound by such last annual general account, and shall be excluded from examining the ptnship books ; and the amount to which the representatives of such deceased ptner [or such retiring ptner] shall be entled as afsd shall, as one aggregate sum carrying interest at the rate of — per cent. per annum from the day of his death [or retiremt], be paid by the surviving [or continuing] ptners or ptner to [him or] his representatives as soon as conveniently may be, and at the latest within six calendar months from the day of his death [or retiremt] ; and the whole of the assets (including the good-will) of the ptnship as from

(*d*) This is a usual provision, but if the capital is small compared with the profits, a proportionately high rate of interest should be fixed ; or the interest might be “ at a rate equal to the average net profits during the three years preceding the last day for taking the annual general account.”

the day of such death [or retiremt] as afsd, shall belong to and the whole of the liabilities thof as from that day shall be borne by the surviving [or continuing] ptners or ptner solely; and all such instrumts, assurances, and transfers, shall be executed and made by the representatives of the deceased ptner [or the retiring ptner] and the surviving [or continuing] ptners or ptner, for the ppose of giving effect to this present provon, and for indemnifying the representatives of the deceased ptner, [or the retiring ptner,] against the liabilities of the ptnship, and for releasing each other against all claims on account of the ptnship, as are usual in such cases.

LII. **PROVD ALWAYS** that if upon the death [or retiremt] of any ptner, it shall appear that the general annual account and valuation up to the — day of — then last past has not been taken and signed as hinbefore provd, the representatives of the deceased ptner [or the retiring ptner] shall be entled to join with the surviving or continuing ptners or ptner in taking such account from the foot of the last general account which shall have been taken and signed as afsd up to the — day of — preceding such death, [or retiremt,] for the ppose of ascertaining the value of the share of the deceased [or retiring] ptner in the capital and ppty of the ptnship upon the — day of — then last past, and giving effect to the provon lastly hinbefore contd.

LIII. **IN THE** event of the death [or retiremt] of any ptner, an account and statemt shall be taken and made out of his share of the capital and effects of the ptnship, and of all unpaid interest and profits belonging to him up to the time of his decease [or retiremt], for which ppose a valuation shall be made of any assets or effects requiring valuation [and of the good-will], and the amount so ascertained to be due and owing to the deceased [or retiring] ptner shall be paid by the surviving [or continuing] ptners to him or his representatives, within — calendar months from his decease [or retiremt], with interest thereon from his decease

Proviso for event of annual account preceding death, &c., of a partner not having been taken.

Provision for death or retirement. Short form when deceased, or retiring partner, is to have profits up to his decease or retirement.

[or retiremt], until paymt, at the rate of — per cent. per annum, and on such paymt the share of the deceased ptner in the ptnship ppty and effects shall go and belong to the continuing ptners in the proportions in which they shall have contributed to the pchase thof.

Provision for death or retirement of partner, where his capital is to be paid out by instalments.

LIV. *This will be the same as form LI., substituting for, "his share in the capital of the ptnship with interest to his death," the words, "interest on his share in the capital of the ptnship to his death," and inserting immediately before the words, "and the whole of the assets, &c.," the following, "and his share in the capital of the ptnship shall remain as a loan to the surviving [or continuing] ptners or ptner, repayable with interest at the rate of — per cent. per annum by the instalmts and at the times hinafter mentd, that is to say, the principal sum by four equal instalmts, to be paid resply at the expiration of six, twelve, eighteen, and twenty-four calendar months from his death [or retiremt]; and the interest on the sd principal sum, or on so much thof as shall for the time being remain unpaid, shall be added to and paid with each such instalmt of principal, and the paymt of such instalmts and interest shall be secured to the representatives of the deceased [or the retiring] ptner at the expense and by the joint and several bond or covenant of the surviving [or continuing] ptners or ptner."*

Provision for death or retirement of partner, where his capital is to remain as a loan during the partnership term.

LV. *This will be the same as form LI., substituting for "his share in the capital of the ptnship with interest to his death," the words, "interest on his share in the capital of the ptnship to his death," and inserting immediately before the words, "and the whole of the assets, &c.," the following, "and his share in the capital of the ptnship shall remain as a loan (e) to the surviving [or continuing] ptners or ptner during the residue of the sd term of — years [or during*

(c) If the firm becomes bankrupt, or goes into liquidation, before all the debts due at the death of the deceased partner are paid, his representatives cannot prove for the moneys due to them. *Re Dixon, Ex parte Gordon*, L. R. 10 Ch. Ap. 160; *S. C. sub nom. Nanson v. Gordon*, 1 App. Cases, 195; *Ex parte Blythe*, 16 Ch. D. 620.

such shorter period as such surviving [or continuing] ptners or ptner shall carry on the sd business either alone or in ptnship with any other psons or pson in accordance with the provons of these presents] bearing interest at the rate of — per cent. per annum, payable on the usual quarter days, [and additional interest for each year, during which the ptnship shall make any profits, equal to one — pt of such profits (*f*), as appearing by the annual general account: such additional interest to be paid on the signature of the annual general account, and an apportioned pt thof to be paid for any fractional pt of a year at the commencement and termination of the sd loan]; And the repaymt of the sd loan at the end of the sd period, togr with interest thereon as afsd, shall be secured to the representatives of the deceased [or the retiring] ptner at the expense and by the joint and several bond or covenant of the surviving [or continuing] ptners or ptner.”

LVI. IN CASE any ptner shall die before the expiration of the ptnship, the surviving ptners or ptner shall have the option of retaining his share in the capital of the ptnship in the sd business during the residue of the term of the ptnship, such option to be signified to the representatives of the deceased ptner within a reasonable time after his will shall have been proved or administration of his este shall have been granted; and in case the surviving ptners or ptner shall elect so to do, the sd business shall be carried on during the residue of the sd term as from the death of the deceased ptner, as nearly as may be according to the provons of these presents, but so that the representatives of the deceased ptner shall succeed to his share in the business, and be substituted for him as sleeping ptners only: Prov'd that in case the surviving ptners or ptner shall continue the business by virtue of such option as afsd, all proper instruments for carrying the provons of this clause into effect shall be executed and made between them or him and the repre-

Option to
surviving
partners to
retain
share of
deceased
partner in
business,
his repre-
sentatives
being
sleeping
partners.

representatives of the deceased ptner : Provd also that if the net profits of the business which shall be coming to the representatives of such deceased ptner shall in any year be less than — per cent. on the amount of the capital of such deceased ptner retained in the sd business, it shall be lawful for such representatives to retire from the ptnship on giving not less than six calendar months' notice to the other ptners or ptner of their intention so to do, or leaving such notice at the counting-house, or, "office," of the ptnship ; and at the expiration of such notice the ptnship shall determine as to them, and they shall be entled to receive the share of capital of such deceased ptner, with all interest and profits becoming due thereon up to the expiration of such notice, on the same or the like footing as if the deceased ptner had then died, and such option of retaining his capital as afsd had not been exercised.

Power for
repre-
sentatives
of deceased
partner to
continue as
sleeping
partners.

LVII. IF ANY ptner shall die before the expiration of the ptnship, his representatives shall have the option, to be decld by notice in writing given to the surviving ptners or ptner, or left at the counting-house, or, "office," of the ptnship, within — calendar months after his death, of succeeding to his share in the sd business as from his death as sleeping ptners ; and if such option shall be exercised the sd business shall be carried on during the residue of the sd term as from the death of such deceased ptner, as nearly as may be according to the provons of these presents, but so that the representatives of the deceased ptner shall succeed to his share in the sd business, and be substituted for him as sleeping ptners only : Provd also that in case the representatives of a deceased ptner shall elect to become sleeping ptners, by virtue of such option as afsd, all proper instrumts for carrying the provons of this present clause into effect shall be executed and made between them and the surviving ptners or ptner. *Add proviso at end of last form, mutatis mutandis, if desired.*

Proviso as
to rights
of sleeping
ptners.

LVIII. PROVD ALWAYS that after the death of any of the sd ptners his representatives who may be sleeping ptners, or

entitled to any share of profits or payment in proportion to profits as aforesaid, shall not have any power to interfere in or have any control over the conduct or management of the said business [and shall not be entitled to require the production of any accounts, vouchers, or documents, or any information as to the transactions or affairs thereof, and the surviving partners or partner shall half-yearly on or as soon as may be after the 1st day of — and the 1st day of —, give or send to the representatives of the deceased partner a statement or balance-sheet showing the net profits of the business during the preceding half-year, and shall certify in writing to the best of their or his belief the correctness of such statement or balance-sheet, which shall thereupon become absolutely binding on such representatives] [or, but such representatives or some person nominated by them shall be entitled at all reasonable times to have access to and examine and copy the books, documents, and papers of the firm, and to join in taking the half-yearly general account and valuation].

LIX. UPON THE death of a partner, or at any time thereafter, the surviving partners or partner on the one hand and the representatives of the deceased partner on the other hand shall execute such deeds of covenant, powers of attorney, assignments, releases, or other instruments as may be reasonably required for [providing for the loan of the capital of the deceased partner upon the terms aforesaid, or securing the repayment thereof with such interest and remuneration for the use thereof as hereinbefore provided, or for] the indemnity of the representatives and assets of the deceased partner against the debts and engagements of the partnership, or for enabling the surviving partners or partner to get in the debts of the partnership, or for the release or assignment to the surviving partners or partner of the property of the partnership or any part thereof, or for any other object incidental or proper to the circumstances, every such deed or other instrument to be prepared and executed at the joint and equal expense of the party requiring the same and the other party or parties.

General provisions as to execution of deeds, &c., on death of partner.

LX. IN CASE of the death [or retirement] of the said A., the Power to surviving

or continuing partners to purchase lease of house of business on death or retirement of one partner.

surviving or continuing ptners or ptner shall be at liberty, at any time within — calendar months after his decease [or retiremt], to pchase the lease of the sd house and offices at —, in case the same shall not have expired, at a valuation to be made under the arbitration clause hinafter contd [or, by paymt to him or his representatives of the sum following, that is to say, if he shall die on or before the — day of —, the sum of £—, and if he shall die after that day, then such a sum as shall be payable, allowing for every year which shall have elapsed from the sd — day of — the sum of £— in diminution of the sd sum of £—].

Provision for determining by notice by reference to provisions for death.

LXI. IN THE event of the determination of the ptnship as to any ptner by notice, under the provon in that behalf hinbefore contd, the like provons, *mutatis mutandis*, shall have effect as are hinbefore in clauses — to — contd, with respect to the event of the death of any ptner, and as if the ptner as to whom the ptnship shall be determined by notice as afsd had died at the time of such determination.

Allowance for good-will.

LXII. ON THE death or retiremt of any ptner an allowance, *or*, “no allowance,” shall be made to him or his representatives in respect of the value of the good-will of the sd business.

Mode of valuing good-will.

LXIII. IN ANY case in which it may become necessary to value the good-will of the sd business the same shall, unless otherwise agrd, be taken to be equivalent in value to *three* times the average net yearly profits of the sd business during the *three* preceding years, or from the commencemt of the ptnslup if less than that time.

On death, or retirement of partner, his share of profits to accrue to survivors.

LXIV. THE SHARE of net profits becoming undisposed of by the death [or retiremt] of any ptner shall accrue to the surviving [or continuing] ptners or ptner, and if more than one in the shares in which at such death [or retiremt] they shall be entled to participate in the profits, and they or he shall carry on the sd business during the residue of the sd term of — years psuant to the provons of these presents, or as near thto as circes will admit.

LXV. ON THE retiremt of any ptner any of the ptners (including the retiring ptner) may sign in the name and on behalf of all the ptners a proper notice of the dissolution of the ptnship as to the retiring ptner, and publish the same in the London Gazette, or, "the dissolution of the ptnship as regards the outgoing ptner shall be sufficiently notified by a circular addressed to the correspondents of the firm, and without any advertisemt in the Gazette."

As to
publishing
notice of
retirement
of partner.

LXVI. IN THE event of any of the sd ptners retiring as afsd he shall not during the remainder of the term of the sd ptnship carry on or engage or be interested directly or indirectly in any other business competing or interfering with the business of the sd firm.

Retiring
partner
not to
carry on
business.

LXVII. PROVID THAT if at any time owing to losses [or accidents at the mines, or faults in the strata], or from any other cause whatever, one-fourth of the entire capital of the ptnship shall be sunk, or reasble apprehensions shall be entertained that a call would require to be made for further capital to the extent of £—— in order to carry on the works and business of the ptnship, a majority in value of the ptners may require the ptnship to be dissolved and wound up, as if the same had expired by effluxion of time.

Power to
dissolve in
case of
losses.

LXVIII. IF THE SD A. shall die before the expiration of the ptnship by effluxion of time, leaving a widow and also the sd B. and C., or one of them, surviving him, his widow shall be entled during her life to an annuity of £——, to accrue from day to day, but to be payable on the usual quarter days, to be charged on the net profits of the sd business during the then residue of the sd term of —— years, and on the net profits of any business of —— which may be carried on by the sd B. and C., or either of them, either alone or in ptnship with any other pson or psons during the life of such widow, and either before or after the expiration of the sd term of —— years [and if such business shall not be continued, then to be payable as to one moiety by the sd B., his exs or ads, and as to the other moiety by the sd C., his exs or ads].

Provision
for pay-
ment of
annuity to
widow of
one partner
during her
life.

Provision
for secur-
ing an-
nuity to
family of a
deceased
partner
during the
partner-
ship term.

LXIX. IF THE SD A. shall die during the sd term of — years leaving a widow, child, or children, his exs or ads shall be entled to an annuity of £——, to accrue from day to day, but to be payable on the usual quarter days, during such pt of the residue of the sd term of — years as such widow or any such child shall be alive, to be charged on the net profits of the sd business, [and if such business shall not be continued, &c., *as in last form.*]

The same,
where the
annuity is
to continue
after the
expiration
of the
partner-
ship.

LXX. IN CASE the sd A. shall die [during the sd term of — years], leaving a widow, child, or children, the sd B. shall pay to the exs or ads of the sd A. until he, the sd B., shall die, or shall retire from carrying on the sd business without receiving any paymt, annuity, or pecuniary compensation for his retiremt, [and without having nominated a son or nephew to succeed to his share in the ptnship under the provons in that behalf herein contd.] and without retaining any share in the profits of the sd business, or the widow and children or child, if any, of the sd A. shall all have died, whichever shall first happen, an annuity of £—— clear of all deductions, to accrue from day to day, but to be payable half-yearly, the first of such paymts (in case the same shall become payable) to be made at the expiration of six calendar months from the death of the sd A.

The same,
adapted to
case of
several
partners.

LXXI. IN CASE the sd A. shall die [during the sd term of — years], leaving a widow, child, or children, the surviving or continuing ptners shall pay to the exs or ads of the sd A. until every one of such ptners shall have died or retired from carrying on the sd business without, &c., *as in preceding form.*

Power to
any partner
to intro-
duce a son
into the
firm.

LXXII. ANY PTNER may at any time during his lifetime, or by his will, introduce any son who shall have attained the age of twenty-five years [but not more than one] as a ptner into the sd firm during the residue of the sd term for any pt or the whole, or, “but not for the whole,” of his share in the ptnship, it being intended that the share of profits of such son shall be wholly derived from the share of

his father, and may transfer to such son [all or] such pt as the ptner introducing him may think fit of the capital of such ptner in the sd business, and so that the admission of such son shall be upon the following terms:—First, that such new ptner shall contribute to the losses of the ptnship in proportion to his share of profits; Secondly, that the father of the new ptner or the majority of the ptners may at any time within — years from his admission, by notice in writing, expel him from the sd firm and publish a notice of dissolution of the ptnship as regards him; Thirdly, such terms, if any, as may be agrd upon between the new ptner and his father as to the reverter to his father [or his representatives] of the share or part of the share of profits and capital assigned to the son upon his death or retiremt or expulsion [in his father's lifetime]; Fourthly, that on the retiremt or expulsion of such new ptner, subj to any such arrangemt as last afsd, he shall have the same rights as to the paymt of his share of capital, interest, and profits as his representatives would have had if he had died at the time of his retiremt or expulsion; Fifthly, that the sd ptnship shall thenceforth during the residue of the sd term of — years continue, and the provons herein contd shall, as far as may be, apply to such son [or sons], and operate and take effect with such modifications as the admission of such new ptner and the change of circes may require, subj to the modifications herein contd; And Sixthly, that such new ptner on being admitted shall execute a proper deed of accession binding him to observe the provons of these presents so far as they shall apply to him and be capable of taking effect, and containing such other provons as may be necessary or proper to effect the intentions hinbefore expd, and any dispute or difference as to the form or contents of such deed shall be referred to arbitration under the clause in that behalf hinafter contd.

LXXIII. IT SHALL be lawful for the sd A. at any time during his life to introduce into the ptnship, as an additional ptner or ptners, any son or sons of his, not exceeding two,

Provision
for securing
the admis-
sion of two
sons of the

senior
partner
into the
business,
adapted to
a partner-
ship for
life.

and to give to such son or sons the whole or any pt of the share of him, the sd A., in such profits, and in the event of two sons of the sd A. being so introduced, the share of profits given by him to them shall be divided between them in such proportions as the sd A. shall think fit: in case the sd A. shall die before he shall have introduced any son or more than one son into the ptnship, and any son of the sd A., or in case no son shall previously have been introduced into the ptnship, then in case any two sons of the sd A. shall attain the age of — years and shall desire to be apprenticed [articled] to the sd business, the surviving or continuing ptners or ptner for the time being shall receive such son or sons of the sd A. as an apprentice or apprentices, [or, if a solicitor's business, articled clerk or clerks,] without any premium or paymt [except for the stamp or stamps on the articles], and any such son or sons who shall be so apprenticed [articled], whether in the lifetime of the sd A. or after his decease, shall, if he or they shall so desire, within — years after the commencemt of such apprenticeship, [or, articles, provd he or they resply shall have been duly admitted to practise as a solor,] be admitted into the ptnship without premium and upon the terms of such son or sons receiving the share of the profits of the sd business to which the sd A. would, if he had been living and remained a ptner, have been entld, inclusive of any additional share which shall have accrued to the sd A. by the death or retirement of any of the sd ptners, or would have so accrued, or would thereafter accrue to him in such event if he had been living and remained a ptner, to the intent that such son or such two sons togr shall succeed to the rights of the sd A. as regards sharing in the profits of the sd business, and so that if two sons are so admitted, the sd share of profits shall be divided between them in such mnner as they may agree, and in case either of them shall die or retire, his share in the sd profits shall thereupon accrue to the other of them: PROV'D ALWAYS that in case any son or sons of the sd A. shall be admitted into the ptnship, whether during his

lifetime or after his decease, under the provons hinbefore contd, the ptnship shall, as regards the duration thof, continue during so long as the ptners for the time being or any two of them shall live, [but subj to determination as regards any ptner by notice, as hinbefore provd:] PROVD ALSO that any son or sons of the sd A. who shall be so admitted shall, with respect to the managemt of the sd business, and the amount of control which he or they shall be entld to exercise in relation thto, be in the same position and have the same rights as the sd B. as far as the case will admit, and shall be bound to give his or their whole time and attention faithfully and diligently to the sd business, and shall not be engaged in any other business, and in other respects such ptnship shall be upon the terms of this present ptnship as nearly as may be, the son or sons of the sd A. being, save as herein otherwise provd, placed on an equal footing with the sd B. : PROVD ALSO that in case the sd son or sons of the sd A. shall be admitted into the ptnship, whether in his lifetime or after his decease as afsd, he or they resply shall on being so admitted enter into a proper engagemt by deed to abide by and perform the stipulations and agreemts of these presents so far as the same shall be applicable to him or them resply, and such deed or deeds shall contain such other provons as may be necessary or proper to give effect to the intentions hinbefore expd, and in case any dispute or question shall arise as to the form or contents thof, the same shall be referred to arbitration under the clause hinafter for that ppose contd : PROVD FURTHER that notwithstanding the provons hinbefore contd, it shall be lawful for the sd B. at any time after the decease of the sd A., and before both his sons shall have been admitted into the ptnship as afsd, to retire from carrying on the sd business, provd that he either receive no paymt, annuity, or pecuniary compensation for such retiremt, or that his successor or successors in the business covenant with him to perform and observe the stipulations and agreemts hinbefore contd respecting the admission of the sd son or sons of the sd A.

into the sd business, and in that event the sd B. shall not be liable for any default in the observance or performance of the covenant so entered into by such successor or successors.

Power of
expulsion
in case of
lunacy,
bank-
ruptcy, or
breach of
covenant.

LXXIV. PROVD ALWAYS that if any of the sd ptners shall at any time during the ptnship become [lunatic or] bankrupt, or enter into any composition or arrangemt with or for the benefit of his creditors, or commit any breach of any of the stipulations or agreemts herein contd, the other ptners or ptner may, by notice in writing, given to the ptner so becoming [lunatic, or] bankrupt, or entering into such composition or arrangemt, or committing such breach, or left at the counting-house, or, "office," determine the ptnship so far as regards such last-mentioned ptner, and publish a notice of dissolution of the ptnship as regards him, whereupon the same shall immediately cease and determine accordingly, without prejudice to the remedies of the other ptners or ptner for any antecedent breach of any of the stipulations or agreemts aforesd, and thereupon the like provons, *mutatis mutandis*, shall have effect respecting the paymt out of the share of the ptner as to whom the ptnship shall be determined as aforesd or otherwise, as if he had then died.

How
notices to
be given.

LXXV. ANY NOTICE hby authorised or required to be given to the sd ptners, or any of them, shall be sufficiently given by leaving the same addressed to them or him at the counting-house or office [principal place of business] of the sd firm.

As to
matters
not ex-
pressly
provided
for.

LXXVI. IN ANY matters not herein expressly provd for the conduct of the ptnship business shall, subject to the decision of the majority of the ptners, be governed by the usage of the former firm of — & Co., existing immediately before the commencement of the ptnership hereby constituted.

Arbitration
clause.

LXXVII. IF AT any time during the continuance of the ptnship or after the dissolution or determination thof, any dispute, difference, or question shall arise between the sd ptners or any of them, or their or any of their represent-

atives, touching the ptnship or the accounts or transactions thof, or the dissolution or winding up thof, or the construction, meaning, or effect of these presents, or anything herein contd, or the rights or liabilities of the ptners or their representatives under these presents or otherwise in relation to the premes, then every such dispute, difference, or question shall be referred, &c., *see* Vol. I. ARBITRATION, p. 149, *form* I., *or*, p. 151, *form* II.

LXXVIII. IF AT any time any dispute or question shall arise under these presents the same shall be referred to two arbitrators or their umpire, *or*, "to a sole arbitrator," pursuant to the Common Law Procedure Act, 1854, or any statutory modification or re-enactmt thof for the time being in force, and so that this submission and the award may at the instance of either pty and without notice to the other of them be made a rule or order of any Division of the High Court of Justice. The same, very short form.

LXXIX. ANY DIFFERENCE, &c., shall be decided by an action in the High Court of Justice, which action shall immediately after appearance be referred to an official referee. The pty bringing such action may enter an appearance for the other pty or pties thto, and may consent for him or them to such reference, and instruct solicitors and counsel in that behalf. Provision for settlement of differences by reference in action.

LXXX. IN CONSON of the premes the sd A. and B. do and each of them doth hby mutually rele and discharge the other of them his hrs, exs, and ads, from all claims and demands, actions, and proceedings whatsoever for or in respect of the covenants, agreemts, and provons contd in the deed of ptnship of the — day of — under which the sd business has htofore been carried on, which is intended to be wholly superseded by these present articles of ptnship. Mutual release in respect of former deed of partnership.

PRECEDENTS.

I.

PREC. I.

DEED of PARTNERSHIP between Two TRADERS for a TERM of years. VARIATIONS where the PARTNERSHIP is for LIFE, or DETERMINABLE on NOTICE, also where RECITALS are inserted, and where a PREMIUM is paid.

Parties. Recitals. Trade carried on. Employment of new partner. Agreement.	<p>THIS INDRE, made the — day of — BETWEEN A., of, &c., of the one pt; and B., of, &c., of the other pt :</p> <p>[WHAS the sd A. has for some years past carried on the trade or business of —, at — : AND WHAS the sd B. has for some time past been engaged as a confidential clerk in the sd business : AND WHAS the sd A. has agrd to take the sd B. into ptnship with him in the sd business for the period and upon the terms hinafter mentd, in conson of the premium or sum of £—— (a), which has been paid by the sd B. to the sd A. upon the execution of these presents, the rect whof the sd A. doth hby acknowledge (b) : NOW THIS</p>
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(a) The articles would appear to be chargeable with *ad valorem* duty on the premium] under the head "Conveyance on Sale" in the Stamp Act ; otherwise they would be liable only to 10s. if under seal, or 6d. if under hand.

(b) The following are other forms of recitals :—

Old partnership.

" WHAS the sd pties hto have for some time past carried on business as — in ptnship togr under articles of ptnship dated, &c., and they are entled to the capital of the sd ptnship consisting of, &c., in the shares following, namely the sd A. to — shares thof, &c. ; AND WHAS the sd pties have agrd that the sd ptnship shall be continued and carried on as from the — day of — for the period and upon

Agreement for new partnership.

INDRE] WITNETH that in conson of the mutual con- PREC. I.
fidence of the sd pties, [and of the premes] each of them the Wit-
sd A. and B., so far as the agreemts and provons hinafter necesseth.
contd are or ought to be performed or observed by him, his
exs or ads, doth hby covenant with the other of them, his Covenant.
exs and ads in mner following, that is to say, *insert such of* Clauses.
the following clauses as may be applicable, the clauses being
paragraphed and numbered: Duration and style of partner-
ship, p. 291; [Power to determine partnership by notice, p.
291;] Place of business, p. 292; Provisions as to capital, see
clauses VII. to XV., p. 292; [Employment of capital, p. 294(c);]
Bankers, p. 294; Out-goings, p. 295; Profits, p. 295; Draw-
ings, p. 296; Attention to business, p. 297; Not to engage in
any other business, p. 298; Not to pledge credit of firm, p.
298; Not to give credit when forbidden, p. 299; No contract
to exceed a certain amount, p. 299; Hiring clerks, &c., p.
299; Not to become surety, &c., p. 299; [To be just, p. 299;
To give information, p. 299; Journeys, p. 299; Not to cause
the property of the firm to be taken in execution, p. 300; Each
partner to pay his private debts, p. 300; Not to assign share,
p. 300; Not to compound debts, p. 300 (c);] Accounts to be
kept, p. 300; Annual general account, p. 301; Provisions for

the terms hinafter expd, and that the sd existing articles of Title to
ptnship shall be hby superseded: AND WHAS the sd A. and partner-
B. are entled in equal shares as pt of their ptnship ppty ship
to the messuages, lands, hereds, and premes, situate, &c., property.
in or upon which the sd business is carried on, which are
partly of freehd tenure and partly leasehd held under a
lease, dated, &c., for a term of — years from the —
day of —, and to the fixed and moveable machinery,
plant, stock in trade, and other effects specified in the stock
account contd in the books of the sd ptnship, which freehd
and leasehd premes, machinery, plant, stock, and effects are
valued at £——.”

(c) The clauses in these brackets may be omitted, if it is desired to shorten the draft.

PREC. I. *winding up on expiration of partnership by effluxion of time or death, as the case may require, see pp. 801 to 811, clauses XLVIII. to LXVI., if the partnership is for a term the usual provisions will be Nos. XLVIII. and LI.; if for life, the usual provision will be No. XLVIII.; if there is a power to retire on notice, the variations providing for that event will be inserted; [Expulsion clause, p. 816;] Arbitration, p. 816; Add any of the other clauses above which may be appropriate.*

IN WITNESS, &c.

II.

PREC. II. *DEED of PARTNERSHIP between THREE or more persons for a TERM of years. VARIATIONS where the PARTNERSHIP is for LIFE, or DETERMINABLE on NOTICE. Without RECITALS.*

Witnesseth. *PARTIES, A., 1; B., 2; C., 3; D., 4: WITNEETH that in conson of the mutual confidence of the sd pties, each of them the sd A., B., C., and D., so far as the agreemts and provons hinafter contd are or ought to be performed or observed*

Covenant. *by him, his exs or ads, doth hby covenant with the others of them, their exs and ads, jointly and severally as follows, that*

Clauses. *is to say; insert the following clauses, or such of them as may be appropriate, in numbered paragraphs; Duration and style of partnership, p. 291, form II.; [Power to determine partnership by notice, pp. 291, 292;] Death, &c., of one partner not to dissolve partnership as to others, p. 292; Place of business, p. 292; Provisions as to capital, pp. 292 to 294; [Employment of capital, p. 294; (a)] Bankers, p. 294; Outgoings, p.*

(a) The clauses in these brackets may be omitted, if it is desired to shorten the draft.

295; *Profits*, p. 295; *Drawings*, p. 296; *Attention to business*, p. 297; *Not to engage in any other business*, p. 298; *Not to pledge credit*, p. 298; *Not to give credit when forbidden*, p. 299; *No contract to exceed a certain amount*, p. 299; *Hiring clerks*, p. 299; *Not to become surety*, p. 299; [*To be just*, p. 299; *To give information*, p. 299; *Journeys*, p. 299; *Not to cause property of firm to be taken in execution*, p. 300; *Each partner to pay his own private debts*, p. 300; *Not to assign share*, p. 300; *Not to compound debts*, p. 300 (a);] *Accounts to be kept*, p. 300; *Annual general account*, p. 301; *Provisions for winding up, &c., on expiration of partnership or death, &c., as the case may require*, see pp. 301 to 311, clauses XLVIII. to LXVI.; if the partnership is for a term the usual provisions will be Nos. XLVIII., LI., and LXIV.; if for the joint lives, the usual provision will be No. XLVIII.; if during the lives of the partners, or any two of them, the usual provisions will be Nos. XLVIII. and LI.; if there is a power to retire on notice, the variations providing for that event will be inserted, or if convenient, that event may be provided for by a separate clause, see p. 310, No. LXI.; [*Expulsion clause*, p. 316;] *Arbitration clause*, p. 316; Add any of the other clauses above that may be appropriate.

IN WITNESS, &c.

III.

DEED of PARTNERSHIP between THREE PERSONS AS PREC. III.

SOLICITORS for a TERM. VARIATIONS where the PARTNERSHIP is for LIFE or determinable on NOTICE.

PARTIES, A., one old partner, 1; B., another old partner, 2; C., incoming partner, 3. WHAS the sd A. and B. are Recitals. engaged in ptnship togr in the profession, practice, and Business.

- PREC. III.** business of solors and conveyancing at —, and it has been agrd between them and the sd C. that the sd C. should pchase one equal — share of their business, including profits of offices and appointmts held by the sd A. and B. [other than the office of — now held by the sd A.], and that the sd A., B., and C. should carry on the sd business in ptnship togr for the period and upon the terms hinafter mentd: **NOW THIS INDRE WITNETH** that, in psuance of the sd agreemt, and in conson of the mutual confidence of the sd pties, and of the sum of £—— (a) upon the execution hereof
- Wit-
nesseth.** paid by the sd C. to the sd A. and B., the rect whof is hby acknowledged, each of them the sd A., B., and C., so far as the agreemts and provons hinafter contd, &c., *the remainder of the deed will be similar to Precedent II., p. 320, so far as applicable, with the following alterations and additional clauses.*
- Covenant.** *In the clause as to outgoings, p. 295, after the words, "in respect of the same," add the words, "including the expenses of performing the duties of any such office or appointmt as hinbefore mentd [except the sd office of —]."*
- Outgoings.** **PROVD ALWAYS** that any money received from clients indebted to the sd late firm of — for business transacted previously to the commencement of the ptnship hby constituted or otherwise, shall be appropriated and applied in the first instance in paymt of the money so due or owing to the sd late firm.
- Appropriation of moneys received from clients of late firm.** *After attention to business, p. 297, add, if so intended, a proviso, "that the said A. shall not be required to act as an advocate."*
- One partner not to be required to act as advocate.** **IN THE EVENT** of the firm or any ptner acting as solor for or on behalf of any of the ptners or his wife or children, or his or their trees, such business shall not be charged for except as to paymts out of pocket, and except costs recovered
- Charges for business done for any partner or his family.**

(a) See p. 318, note.

against other pties in any successful action or defence or other proceedings, or out of any fund or este to which such action or proceeding shall relate, which costs shall be carried to the credit of the ptnship. PRÆC. III.

After the clause, Not to engage in any other business, p. 298, add, "No PTNER shall undertake the prosecution or defence of any action or proceeding or transact any professional business on behalf of any pson or co other than himself or his own wife or children, or his, her, or their trees, after having been required in writing not to do so by the other ptners or ptner." Not to undertake business objected to by other partners.

No PTNER shall hire or dismiss any clerk or servant or take any articulated clerk [or change the London agents of the firm] without the consent of the other ptners or ptner. Clerks, &c.

After accounts to be kept, p. 300, add, "And each ptner shall enter in proper books kept for that ppose all attendances and professional business transacted by him, togr with all such circes of names, times, and places as may be necessary or useful for the manifestation of the business of the ptnship. The sd books with all deeds, secs, letters, and documts relating to the ptnship, shall be kept at the offices of the ptnship, and each ptner shall at all times have power to peruse or copy the same." Accounts to be kept.

After dissolution clauses, add, "ON THE DEATH [or retirement] of any ptner, all deeds, drafts, and other papers relating to the business of the sd firm shall (subjt to the claims of any clients to whom the same may belong) remain in the hands of or be delivered to the surviving or continuing ptners or ptner." Provision as to the papers on death or retirement of partner,

UPON THE FINAL determination of the ptnship by effluxion of time, all deeds, drafts, and papers relating to the business of the firm shall, unless the client or clients to whom the same belong object, be delivered to the ptner who shall usually have attended to the business of such client or clients. and on dissolution.

IN WITNESS, &c.

IV.

REC. IV. EXTENSION of TERM of PARTNERSHIP by DEED endorsed
on or appended to (a) the ARTICLES.

Recitals. PARTIES, A., 1; B., 2; C., 3. WHAS the term of —
Expiration of term. years, which was by the within [above] written indre fixed for
the duration of the ptnship thby agrd to be entered into,
Agree- will expire on the — day of — next: And WHAS the sd
ment. pties lto have agrd to continue the sd ptnship for the further
term of — years from the sd — day of — in mner
Wit- [and subjt as] hinafter expd: NOW THIS INDRE WIT-
nesseth. NETH, that each of them the sd A., B., and C. doth hby
Covenant. covenant with the others of them and their exs and ads jointly
and severally in mner following, that is to say, That they the
To con- sd A., B., and C., and the survors of them will remain and
tinue partner- continue ptners togr in the within [above] mentd trade or
ship. business for the further term of — years, to be computed
from the sd — day of — next, if they or any two of
them shall so long live, upon such and the same terms and
condons and subjt to such and the same provons and
agreemts [except and subjt as hinafter mentd] as are in and
by the within [above] written indre expd and contd in relation
to the ptnship thby constituted, and so that all such terms,
condons, provons, and agreemts, shall [subjt as hinafter
mentd] remain in force and take effect in like mner as if the
sd ptnship had been originally entered into for the full term
of — years, instead of the sd term of — years:
[PROVD ALWAYS, and it is hby agrd, &c., here insert any
modifications in the terms of the partnership].

IN WITNESS, &c.

(a) As to appending deeds to prior deeds, see the Conv. Act, 1881, s. 53, p. 202, note, and Vol. I., p. 75, note.

V.

DEED of ACCESSION *on the ADMISSION of a SON of a* PREG. V.
 PARTNER *into the Firm pursuant to a PROVI-*
 SION *contained in the ARTICLES of PARTNERSHIP.*
 VARIATIONS *where the deed is ENDORSED on or*
 ANNEXED *to the articles (a).*

PARTIES, A., father, 1; B. and C., two other old partners,
 2; D., "son of the sd A.," 3. *WHAS by certain articles* Recitals.
of ptntship, hinafter called the articles, dated, &c., the Articles of
sd A., B., and C. entered into mutual covenants, amongst partner-
other things, that they would become and remain ptners ship.
in the trade of —, under the firm of —, for the term
of — years, from the — day of —, continue the
recital, setting out the clauses as to capital, division of profits,
the power to any partner to introduce a son, and the restric-
tive conditions, if any, imposed on such introduction, and
the direction as to a deed of accession; AND WHAS the sd Title to
A., B., and C. have carried on the sd business up to the capital.
present time according to the provons of the sd articles,
and they are now entled to the capital of the sd ptntship,
consisting of, &c., in the shares following, that is to say,
the sd A. to —, &c.: AND WHAS in psuance of the Desire to
provons contd in the sd articles as afsd, the sd A. is introduce
desirous of introducing the sd D. as a ptner into the sd son.
firm for the residue of the sd term, and to assign to him one

(a) If the deed is endorsed or annexed, the recital of the articles will be omitted, and they will be referred to as "within, or, 'above,' written"; the other consequential alterations will be obvious. If the deed is not actually annexed, it may be connected with the articles by adding after the parties, "intd to be read as annexed to a deed of ptntship dated, &c., and expd to be made, &c." As to this, see last page, note.

PREC. V. equal fourth pt of the share of him the sd A. but subj to
Wit- the restrictions and provons hinafter contd ; NOW THIS
nesseth. INDRE WITNETH that for effectuating the sd desire, and
in psuance of the sd provon contd in the sd articles, the sd
Introduc- hby introduce the sd D. as a ptner into the sd firm, upon the
tion. terms and subj to the restrictions and provons hinafter
Assign- contd : AND THE sd A. doth hby assign unto the sd D., his
ment exs, ads, and assigns, ONE equal fourth pt of the share of
of share. him the sd A. in the capital, stock in trade, assets, goodwill,
Habendum and profits of the sd firm as from the — day of —, To
to son. HOLD the same UNTO the sd D., his exs, ads, and assigns
Further absolutely, subj as hinafter mentd : AND THIS INDRE
witnesseth. ALSO WITNETH that psuant to the provons contd in the
Covenants. sd articles, *mutual covenants by A., B., C., and D., as in*
Prec. II.
To be part- 1. THAT THEY the sd A., B., C., and D. will, as from the
ners. — day of —, be and remain ptners in the sd trade or
business of — for the residue of the sd term of — years,
upon the terms and subj to the agreemts and provons contd
in the sd articles, with such variations as are rendered
necessary by the introduction of the sd D. as a ptner, and
the assignmt to him of the sd one-fourth pt of the share of
the sd A. as afsd, and the provons hinafter contd, and will
perform and observe the sd agreemts and provons, with such
variations as afsd, in the same mnner, as far as circes will
admit, as if the sd D. had originally been a pty to the sd
articles, and the provons of these presents had been embodied
therein.
2. *Here insert the special provisions and restrictions affect-*
ing the new partner.
IN WITNESS, &c.

VI.

AGREEMENT *for the SALE by a RETIRING PARTNER* FORM VI.
with the CONCURRENCE of the continuing partners of
his SHARE in the PARTNERSHIP to an INCOMING
PARTNER. VARIATIONS where the continuing PART-
NERS do NOT CONCUR (a).

PARTIES, A., Retiring Partner, 1; [B. and C., Continuing Partners, 2]; D., Incoming Partner, 3.

1. THE SD A. [with the approval hby testified of the sd Agreement
 B. and C.] agrees to sell, and the sd D. agrees to pchase all for sale.
 the share and interest of the sd A. in the goodwill of the
 business of — as the same is now carried on by the sd A.
 in ptnship with [the sd] B. and C. under the firm of — &
 Co., psuant to articles of ptnship dated, &c., and in the
 assets, ppty, and capital of the sd ptnship and in the profits
 thof as from the — day of —, *the last day of taking the*
annual general account.

2. THE PCHASE money shall be the sum of £— and a Considera-
 further sum equal to what would be the share of profits of tion.
 the sd A. as from the sd — day of — to the day herein
 mentd for completion calculated after the rate of profits
 during the year ending the — day of — last as appear-
 ing from the general account taken on that day by the firm ;
 but the sd D. shall be entled to deduct from the pchase
 money all monies now already or at any time before comple-
 tion to be drawn out by the sd A. in anticipation of his share
 of profits for the current year.

3. THE PCHASE shall be completed on the — day of — Completion
 at the office of Messrs. — the solors of the sd A. [B. and and con-
veyance.

(a) As to the power of a partner to assign his share, see Lindley on
 Partnership, p. 697.

PREC. VI. C.] at which time and place the sd A. shall upon paymt of the pchase money (subjt to such deduction if any as afsd) execute a proper assignmt of the sd premes to the sd D., with such powers of attorney and other provons as may be proper [and the sd B. and C. shall concur in such assignmt]. And if from any cause whatever other than the wilful default of the sd A., the pchase shall not be completed on or before that day the sd D. shall pay to the sd A. interest on the pchase money (after making such deductions as afsd) at the rate of — per cent. per annum from that day until completion.

Indemnity. 4. PROPER INSTRUMTS shall be executed for the indemnity of the sd D. by the sd A. from all the debts, liabilities, and engagemts of the firm, if any, entered into, accepted, or given before the sd — day of — which do not appear in the books of the sd ptnship and for the indemnity of the sd A. and his representatives against all the outstanding debts, liabilities, and engagemts of the firm which appear in the books of the ptnship.

Provision for deed of accession. 5. THE SD B., C., and D. shall upon the completion of the sd pchase, [*If the continuing partners are not parties to the agreement say, "THE SD D., shall if and when required by the sd B. and C."*] execute a deed of accession containing mutual covenants by the sd B., C., and D., to be and remain ptners in the sd business of — for the residue of the term of — years from the — day of — upon the terms and subjt to the agreemts and provons contd in the sd articles with such variations as are rendered necessary by the introduction of the sd D. as a ptner and the assignmt to him of the share and interest of the sd A., and for the performance and observance of the sd agreemts and provons with such variations as afsd in the same mner as far as circes will admit as if the sd D. had originally been a pty to the sd articles.

Costs.

6. EVERY ASSURANCE or instrumt required for giving effect to this agreemt shall be prepared by and at the expense of the sd D., and the costs of the perusal and execution thof by

or on behalf of the other pty or pties thto shall be borne by him or them resply. PREC. VI.

IN WITNESS, &c.

VII.

DEED of DISSOLUTION of PARTNERSHIP between TWO PREC. VII.
PARTNERS on the RETIREMENT of one, where the
BUSINESS is to be CONTINUED by the other.

PARTIES, A., 1; B., 2. WHAS the sd A. and B. have for Recitals.
some years past carried on the business of — at —,
under the provons of articles of ptnship, dated, &c., whby it Articles of
was provided, &c., *state any of the provisions which are* partner-
material (a); AND WHAS the sd ptners are possessed, as pt of Particu-
their ptnship ppty, of a lease of certain — and hereds at lars of
—, which lease is dated, &c., and made, &c., [or, of the partner-
several leasehd ppties specified in the schedule hto], and of ship assets.
certain fixed and moveable engines, machinery, plant, stock-
in-trade, and other effects, *or as the case may be*; AND
WHAS it has been agrd between the sd A. and B. that the sd Agreement
ptnship shall stand dissolved as from the — day of —, for dissolu-
and a notice of such dissolution has been signed by the sd tion.
pties, to be published in the London Gazette, and it has been
agrd that as from that day the sd business shall belong to
and be carried on by the sd B. solely, and that the share and
interest of the sd A. in the assets and goodwill of the sd
ptnship shall be assigned and made over to the sd B. on his

(a) If no articles, say, “and are interested therein in equal shares, but such ptnship is not regulated by any articles or agreeemt in writing.” Where real or leasehold property is conveyed by the deed, any reference to the articles should, if possible, be avoided, in order not to bring them upon the title.

PREC. VII. taking upon himself the whole of the debts and liabilities of the sd ptnship which were outstanding on the sd — day of —, and paying to the sd A. the value of his share and interest in the sd ptnship and the assets and goodwill thof as the same stood on that day: AND WHAS an account and valuation has been taken and made by the sd ptners of the sd business, and the assets and goodwill thof, and the value of the share and interest of the sd A. therein, after providing for the paymt and satisfon of the debts and liabilities thof on the sd — day of —, has been ascertained to be the sum of £— (b): NOW THIS INDRE WITNETH that in psuance of the sd agreemt in this behalf, they the sd A. and B. do hby declare that the sd ptnship between them shall be considered as determined and stand dissolved as from the sd — day of —, [and that the hinbefore mentd indre of ptnship, and all clauses, provons, and things therein contd shall as from the sd — day of — cease and be void]: AND THIS INDRE ALSO WITNETH that in psuance of the sd agreemt, and in conson of the premes and of the sum of £— (c) now paid by the sd B.

Account taken.

Wit-nesseth.

Dissolu-tion.

Further witnesseth.

Variation for instalments secured by mortgage.

(b) If the sum due to the outgoing partner is to be paid by instalments, and security given, add, "AND WHAS it has been further agrd that the paymt of the sd sum of £— shall be made by the sd B. to the sd A., by instalmts, with interest at — per cent. per annum, and shall be secured by the covenant of the sd B. and by a mtge of freehd and leasehd ppty of the sd B. situate at, &c. [including the hereds comprd in the respive leases hinbefore mentd], and such secy is intd to be forthwith executed." And in the second witnessing part, say, "in conson of the premes, and of the sum of £— agrd to be paid by the sd B. to the sd A. as afsd, and the paymt whof is intd to be secured in mner afsd."

As to the stamp duty on a deed of dissolution.

(c) The deed is chargeable with *ad valorem* duty on this sum as on a conveyance on sale (*Christie v. Commissioners, &c.*, L. R. 2 Ex. 46; *Phillips v. The same, ib.* 399). It has been doubted whether it is not liable in addition to duty on the share of the partnership debts which would have to be borne by A., and against which he is indemnified by B., under the Stamp Act, 1870,

to the sd A., the rect whof the sd A. doth hby acknowledge, the sd A. as beneficial owner(d) doth hby assign and transfer unto the sd B., his exs, ads, and assigns, ALL the pt or share and interest whatsoever of him the sd A. of and in all and singular the leasehd(e) hereds and premes hinbefore mentd or referred to [or, the several leasehd hereds and

PREC. VII.
Assign-
ment
of share in
partner-
ship.

a. 73 (see *Ulverstone and Lancaster Ry. Co. v. The Commissioners, &c.*, 2 H. & C. 855); but (having regard to the indivisible nature of a partner's interest in the firm) this is conceived not to be so, and is certainly not regarded in practice. A covenant or bond of indemnity against the debts would, it seems, be chargeable with duty on the whole amount of the debts under the Stamp Act, 1870, Schedule COVENANT (see *Lord Canning v. Raper*, 1 El. & Bl. 164), but if the amount of the debts is not stated (as it seldom is or could be), the sufficiency of the stamp could not practically be questioned (unless the covenant or bond were sued upon) as the onus of proving the existence of debts would be on the party impeaching it.

If the duty on the whole sum paid would be of serious amount, a saving might be effected by dispensing with a formal assignment, except as to any interest in real or leasehold estate, and allowing the matter to rest in contract as to the remainder of the property, care, however, in that case, being taken that the recitals of the deed of dissolution, or the separate receipt taken for the consideration-money, do not operate in law as a transfer of the property so as to let in the liability to duty. See Vol. I., p. 539. For the form of such a deed, see Precedent X., p. 339.

(d) This implies the full covenants for title as on a sale (see Vol. I., p. 366, note), which seems proper; but sometimes only a covenant against incumbrances and for further assurance is given, which may be added to the covenants in p. 333, and may be in the form following: "THAT he the sd A. has not done any act whby the premes hby assigned or any pt thof are, is, or may be charged or incumbered in any mner whatsoever; AND THAT he the sd A., his exs or ads will at all times, at the request and cost of the sd B., his exs, ads, or assigns, execute and do all such assurances and acts for further or more effectually vesting the premes hby assigned, and every pt thof in the sd B., his exs, ads, and assigns, and enabling him and them to receive, recover and obtain the full benefit of the same as shall be reasonably required."

Covenant
by outgoing
partner
against
incum-
brances.
And for
further
assurance.

(e) It may sometimes be desirable to convey or assign the share of a deceased or retiring partner in any real or leasehold property by a separate deed. See Precedent IX.

PREC. VII. premes specified in the schedule hto], AND of and in all and singular the engines, machinery (whetlfer fixed or moveable), plant, stock-in-trade, book and other debts, credits, contracts, assets, effects, profits, business, and goodwill of the sd ptnship, *omitting the general words and estate clause, see Vol. I. pp. 357, 359, notes*, To HOLD all the same premes UNTO the sd B., his exs, ads, and assigns, absolutely; AND FOR the conson afsd and for the more effectually enabling the sd B., his exs, ads, and assigns, to receive and recover and obtain the benefit of the premes hby assigned, the sd A. doth hby irrevocably appoint the sd B., his exs, ads, and assigns, the attorney or attorneys of him the sd A., his exs or ads, in the joint names of the sd A. and B., or in the name or names of the sd A., his exs or ads, or otherwise, as the case may require, but for the exclusive benefit and at the sole cost and risk of the sd B., his exs, ads, or assigns, to demand, call in, and receive from all psons liable to pay, deliver, or account for the same, or anypt thereof, all and singular the book and other debts, credits, monies, and effects of the sd ptnship, and to give effectual rects and discharges for the same resply, and to endorse bills and other negotiable instrumts, and to use and adopt all such remedies, proceedings, or means for getting in and recovering the sd debts, credits, monies, and effects resply, and enforcing and obtaining the benefit of any of the contracts of the sd ptnership as may be deemed expedient, and for all or any of the pposes afsd from time to time to appoint a substitute or substitutes, and such substitution at pleasure to revoke, and generally to do whatsoever may be requisite for giving to the sd B., his exs, ads, or assigns, the full

Haben-
dum
to con-
tinuing
partner.
Power of
attor-
ney (f).

(f) The insertion of this power is proper notwithstanding the provisions of the Judicature Act, 1873, s. 25 (6), making choses in action assignable, as it may be difficult to give notice of the assignment to all the debtors of the partnership. The power being for value and expressed to be irrevocable, cannot be revoked; see the Conv. Act, 1882, s. 8, p. 33, note (b); and the covenant usually inserted not to revoke the power is therefore omitted.

benefit of the assignmt hby made; AND THE sd A. doth hby covenant with the sd B., his exs, ads, and assigns, that he the sd A. has not at any time htofore, except as appears by the books of the sd ptnship, contracted any debt or obligation which can or may charge or affect the sd B., his exs, ads, or assigns, or the assets or effects of the sd ptnship, or any pt thof, or received or discharged any of the sd debts, credits, monies, or effects, except as afsd; AND THAT he the sd A., his exs or ads, will at all times ratify and confirm whatsoever the sd B., his exs, ads, or assigns, or any substitute or substitutes acting under him or them, shall do or purport to do by virtue of these presents; AND WILL not compound, release or become non-suit in any action or proceeding which may be instituted or taken by the sd B., his exs, ads, or assigns, by virtue of the power of attorney hinbefore contd, nor do any other act by means whof the recovery of the premes hby assigned, or any pt thof, may be impeached or delayed, nor interfere in or about the premes further or otherwise than the sd B., his exs, ads, or assigns, shall direct or require; AND THE sd B. doth hby covenant with the sd A., his exs and ads, that he the sd B. will in due course pay all the debts and discharge all the liabilities of the sd ptnship, including therein the rents and covenants to be paid and performed in respect of the sd leasehd premes; AND WILL, at all times hereafter, effectually keep indemnified the sd A., his exs and ads, and his and their este and effects, against all such debts and liabilities, and all actions, proceedings, costs, and expenses in respect thof, and all costs and expenses by reason of any action or proceeding which may be instituted or taken by the sd B., his exs, ads, or assigns, by virtue of the power or authority hinbefore contd, or of anything relating thto: AND EACH of them the sd A. and B. doth hby release and for ever discharge the other of them, his hrs, exors, ads, and assigns

PARG. VII.
Covenant by retiring partner that he has not contracted debts.
To ratify.
Not to release debts, &c.
Covenants by continuing partner.
To pay debts (g).
For indemnity.
Mutual release.

(g) See note above, p. 331.

PREC. VII. from all actions, proceedings, claims, and demands whatsoever which such respive releasing party, or his hrs, exs, ads, or assigns, now has or hereafter might have had against the other of them, his hrs, exs, ads, or assigns, on account of the sd ptnship, or anything relating thto, but so nevertheless that this present release shall not prejudice or affect any of the covenants, agreemts, or provons herein contd, or the rights or remedies of the sd respive pties, their hrs, exs, ads, or assigns, hereunder.

IN WITNESS, &c.

[Schedule of leaseholds.]

VIII.

PREC. VIII.

DEED of DISSOLUTION on DEATH of ONE of THREE partners, where part of the ASSETS consists of REAL and LEASEHOLD PROPERTY, which are transferred by a SEPARATE DEED (a), and where the SHARE of the CAPITAL of the DECEASED PARTNER is to remain as a LOAN to the firm, payable by INSTALMENTS, under a provision in the Articles.

Parties. A. and B., executors of deceased partner, 1; C. and D., continuing partners, 2. **Recitals.** Recite articles of partnership between C. and D., and X., setting out the provisions for death of a partner; Death of X., and will appointing A. and B. executors, and probate, Vol. I., p. 327: AND WHAS the sd ptners were at the decease of the sd X. entled as pt of their ptnship ppty to the hereds specified in the first schedule hto, which are of freehd tenure, and to the hereds specified

Particulars of partnership property.

(a) See above, p. 331, note (e), and Precedents IX. and XII.

in the second schedule hto, which are held under the PRKO. VIII.
 respive leases in such schedule mentd, and they were also
 entled, &c., *State short particulars of other property*; AND Accounts taken.
 WHAS the accounts and valuations directed by the sd articles
 of ptnship to be taken and made on the death of any ptner
 have been taken and made, and it thereby appears
 that the sum of £—— is the amount now due to the sd A.
 and B., as exors of the sd X., in respect of interest and
 profits, and that the sum of £—— is the amount of the share
 of the sd X. in the capital of the sd ptnship, after discharg-
 ing the liabilities thof which were outstanding at the death
 of the sd X. ; AND WHAS it has been agrd [psuant to the Agreement for pay-ment.
 provons contd in the sd articles] that the sd sum of £——
 shall be paid by the sd C. and D. to the sd A. and B. upon
 the execution of these presents, and that the paymt of the
 sd sum of £——, *i. e. the share of capital of X.*, by four
 equal instalmts, at the expiration of six, twelve, eighteen,
 and twenty-four calendar months from the death of the sd
 X., together with interest on the same sum, or the pt thof
 for the time being unpaid, after the rate of —— per cent.
 per annum from his decease, shall be secured to the sd A.
 and B. by the joint and several bond of the sd C. and D.,
 and that the sd A. and B. shall assign to the sd C. and D.
 the share of the sd X. in the assets and goodwill of the sd
 ptnship: AND WHAS, for the pposes of the Stamp Act (b), Apportionment for duty.
 it has been agrd that the sum of £——, pt of the sd sum of
 £——, shall be the value of the share of the sd X. in the
 sd freehd and leasehd hereds, and that the sum of £——,
 residue of the sd sum of £——, shall be the value of the
 share of the sd X. in the residue of the assets and goodwill
 of the sd ptnship: AND WHAS by a bond or obligation bear- Bond.
 ing even date with, but executed before these presents,
 under the hands and seals of the sd C. and D., the sd C.
 and D. have become jointly and severally bound to the sd
 A. and B. in the penal sum of £——, subjt to a condon

(b) See above, p. 330, note (c).

PREC. VIII. for making void the same upon paymt of the sd sum of £ —, by four equal paymts, &c., *state condition of bond*; [or, AND WHAS the paymt of the sd sum of £ — and interest, by the instalmts and in mner afsd, has been duly secured to the sd A. and B. as such exs as afsd, by the joint and several bond of the sd C. and D. bearing even date herewith, as the sd A. and B. do hby acknowledge]: AND WHAS, in further psuance of the hinbefore recited agreemt, by an indre bearing even date with but executed before and made between the same parties as these presents, *short recital of conveyance of freeholds and leaseholds by A. and B. to C. and D. in consideration of the sum apportioned as the value thereof*; NOW THIS INDRE, &c. *Assignment by A. and B. to C. and D., in consideration of the apportioned value thereof and of the premises, of the share of X. in the goodwill and assets, "other than the sd freehd and leasehd premes," as in Precedent VII., mutatis mutandis*, To HOLD the same UNTO the sd C. and D., their exs, ads, and assigns absolutely, according to the respive shares, rights, and interests of the sd C. and D. of and in the ppty of their present ptnship. *If necessary, add a Power of Attorney and covenant to ratify as in Precedent VII., with alterations required for several parties. Joint and several covenants by C. and D. to pay debts, and indemnify A. and B., and estate of X., as in Precedent VII., mutatis mutandis*: AND THE sd A. and B. do and each of them doth hby release and for ever discharge the sd C. and D., and each of them, their and each of their hrs, exs, ads, and assigns, and the sd C. and D. do and each of them doth hby release and for ever discharge the sd A. and B., and their respive hrs, exs, and ads, and the este and effects of the sd X., &c. *as in Precedent VII., with the necessary verbal alterations.*

IN WITNESS, &c.

[Schedule giving short particulars of Freeholds and Leaseholds.]

Convey-
ance of
realty and
leaseholds.

Wit-
nesseth.

Habendum
to partners.

Mutual
release.

IX.

CONVEYANCE and ASSIGNMENT by a RETIRING PREC. IX
 PARTNER to his TWO CO-PARTNERS of his SHARE
 in FREEHOLD and LEASEHOLD PROPERTY, and fixed
 MACHINERY, &c. (to accompany a deed of dissolu-
 tion (a).

PARTIES, A., retiring partner, 1; B. and C., continuing partners, 2. *WHAS* the sd A., B., and C., carried on the business of — in co-partnership up to the — day of — now last past, and are entled as pt of their ptnship ppty to the messuages, buildings, lands, and hereds specified in the first schedule hto, which are of freehd tenure, and to the messuages, buildings, lands, and hereds specified in the second schedule hto, which are of leasehd tenure, and are held under an indre of lease dated, &c., and made, &c., for the residue of a term of — years from the — day of —, at the yearly rent of £—, and to the fixed machinery and other erections and fixtures upon the sd respive freehd and leasehd premes, in the shares and proportions following, that is to say, the sd A. to — equal — pts thof, and the sd B. and C. to the remaining — equal — pts thof: *AND* *WHAS* the sd A. has retired from the sd firm as from the sd — day of — now last past, and the sd B. and C. continue to carry on the sd business of — in co-ptnship togr: *AND* *WHAS* the sd B. and C. have come to a settlmt with the sd A. in respect of his share and interest in the sd ptnship, and the assets and effects thof, and it has been agreed that they should pay to the sd A. the sum of £— in full satisfson of such share and interest: *AND* *WHAS* for the pposes of the Act of Parliament imposing an *ad valorem* duty on conveyances on sale the sum of £—, pt of the sd

Recitals.
Title to property.

*Retire-
ment.*

*Account
settled.*

*Apportion-
ment for
duty.*

(a) See the last Precedent.

PREC. IX. sum of £——, has been apportioned as the estimated value
 of the share of the sd A. in the sd freehd and leasehd
 premes, and the fixed machinery and other erections and
 fixtures thon: AND WHAS it has been agrd that the share
 Agreement for convey- and interest of the sd A. in the sd last-mentd premes should
 ance.
 Wit- after mentd: NOW THIS INDRE WITNETH that in
 nesseth.
 Grant and assign- pursuant of such agreemt, and in conson of the sum of £——
 ment
 of shares. to the sd A. paid by the sd B. and C. out of monies belong-
 ing to their sd new ptnship, receipt, he the sd A. as bene-
 ficial owner (*see Vol. I., p. 365*) doth hby grant, assign, and
 rele unto the sd B. and C., their hrs, exs, ads, and
 assigns respively according to the nature of the sd respive
 premes: ALL THOSE —— equal undivided —— pts or
 shares, and all other the pts, shares, or interests of the sd
 A. of and in the freehd and leasehd messuages, buildings,
 lands, hereds, and premes specified in the sd first and second
 schedules hto, and of and in all the fixed machinery and
 other erections and fixtures in or upon the same respive
 premes; *Omitting general words and estate clause, see Vol. I.,*
pp. 357, 359, notes: To HOLD the same UNTO AND TO THE
 USE of the sd B. and C., their hrs, exs, ads, and assigns re-
 spively as joint tenants in trust for them the sd B. and C.,
 their exs, ads, and assigns, according to their respive shares,
 rights, and interests, as between themselves, of and in the
 ppty of their sd present ptnship, but as regards the sd
 leasehd premes for the residue of the sd term of —— years,
 and subjt to the paymt of the sd rent, and the performance
 and observance of the covenants by the lessee and condons
 of the sd indre of lease; *Joint and severel covenant by B.*
and C. to indemnify A. against rent and covenants of lease,
Vol. I., p. 393.

IN WITNESS, &c.

[Two Schedules.]

X.

DEED of DISSOLUTION of PARTNERSHIP on the retire- PREC. X.
ment of one partner where to SAVE STAMP duty an
assignment of the goodwill and assets OTHER than
LEASEHOLDS is DISPENSED WITH, and where the
leaseholds are in MORTGAGE. VARIATIONS where
part of the sum payable to the retiring partner is to
be secured on MORTGAGE (a).

PARTIES, A., 1 ; B., C., & D., 2. WHAS the sd pties hto Recitals.
have for some years past carried on the business of — Shares in
under the style or firm of —, and the sd A. is entled to which
one-fourth pt or share of the assets of the sd ptnship, and partners
the sd pties hto of the second pt are entled to the remaining are en-
three-fourth pts or shares thof, and the sd pties hto are titled.
liable to bear and discharge the debts and liabilities of the
sd ptnship in the like shares and proportions. AND WHAS Title to
the sd ptners are possessed of the several leasehd pptides properties.
held under the respive leases or agreemts for lease specified
in the first schedule hto, and of certain fixed and moveable
engines, machinery, and other effects, subjt to the mtges
specified in the second schedule hto for debts contracted by
the sd firm. AND WHAS it has been agrd that the sd A. Agreement
shall retire from the sd ptnship, and that the same shall as as to re-
regards him stand dissolved as from the — day of — tirement
of partner.

(a) As to the stamp duty on deeds of dissolution, see p. 330, note. The As to
 contrivance adopted in this precedent to save duty appears to be undoubtedly stamp
 effectual, and may be advantageously adopted where the goodwill, plant, duty.
 stock in trade, or book debts form an important part of the assets. Having
 regard to the mode in which the assets are apportioned in this case, the deed
 would, it is conceived, require only an *ad valorem* conveyance stamp on the
 apportioned sum paid for the assignor's share of the leaseholds, and a 10s.
 stamp in respect of the power of attorney. No further document will
 probably be required, except an ordinary receipt for the balance of the money,
 or a mortgage if so intended ; the rest of the arrangement being sufficiently
 evidenced by the recitals and covenants.

PREC. X.

Valuation
of proper-
ties, and
apportion-
ment for
stamp
duty.

Arrange-
ment as to
money re-
maining
on mort-
gage.

last, and notice of such dissolution has been signed by the sd ptners and published in the London Gazette on the — day of —, and the sd ptnship business is intended henceforth to be carried on by the sd pties hto of the second pt solely : AND WHAS an account and valuation has been taken and made by the sd ptners of the sd business and the assets and goodwill thof, and the amount payable to the sd A. in respect of his share and interest therein at the date of the dissolution has been ascertained in mner following, that is to say, the total value of the sd leasehd premes mentd in the first schedule hto, and the engines, machinery, plant and other things which are affixed thto, and pass with the land, free from incumbrances, is estimated at £A., of which the sum of £B. represents the value of the share and interest of the sd A. therein free from incumbrances as afsd, and the value of the share and interest of the sd A. in the remaining assets and effects and goodwill of the sd ptnship at the date of his retirement thfrom, after deducting all the debts and liabilities of the sd firm, inclusive of the sd mtge debts mentd in the sd second schedule hto (all such mtge and other debts and liabilities of the sd firm being, for the ppose of this calculation and arrangemt, and the ascertainmt of the stamp duty chargeable on these presents, treated as borne by such remaining assets in exoneration of the sd leasehd premes and fixed machinery and plant), is estimated at the sum of £C., making with the sum of £B. the sum of £D. as the full amount payable to the sd A., in respect of his sd share and interest in the sd firm, and the assets thof: [(b) AND WHAS it has been arranged and agrd that the sd sums of £B. and £C., making togr the sd sum of £D., with interest thon from the date of the retiremt of the sd A. from the sd firm, shall be paid or secured to the sd A. in mner following, that is to say, first the sum of £E., pt of the sd sum of £B., with interest thon as afsd, shall be paid by the sd

(b) If the whole of the purchase-money is to be paid down, the part here bracketed will be omitted.

pties hto of the second pt to the sd A. on the execution of these presents, and the sum of £F. being the balance of the sd sum of £B. and the sd sum of £C. making togr the sum of £G., with interest thon as afsd, shall be secured to the sd A. by the pties hto of the second pt, by a mtge of the leases and agreemts for leases specified in the first schedule hto, and the machinery, plant, and other assets of the sd ptnship, and by a covenant to be entered into by the sd pties hto of the second pt for the paymt thof, which sd mtge is intd to bear even date with and to be executed immediately after the execution of these presents]: AND WHAS it has been further agrd that in conson of the paymt of the sd sum of £B. being made [or secured] to the sd A. as afsd, he the sd A. shall execute such assignmt and rele of his share and interest in the sd leasehd premes, and the machinery and plant affixed to and passing with the same, to the pties hto of the second pt as is hinafter contd: AND WHAS it has been further agrd that the pties hto of the second pt shall execute and deliver to the sd A. a proper deed or bond for indemnifying the sd A., his hrs, exs, and ads, against the subsisting debts and liabilities of the sd ptnship, as appearing by the ptnship books, including the several mtge debts mentd in the second schedule hto, and that on the paymt of the sd sum of £C. and interest being made [secured] to the sd A., and on the execution of such deed or bond of indemnity as afsd, the sd A. shall make and execute such instrumt or instrumts as may be requisite or proper for transferring and assigning the remaining assets and effects of the sd ptnship, and the goodwill of the sd business to the pties hto of the second pt: AND WHAS it has been further agrd that the costs of the sd A., and of the pties hto of the second pt of and concerning the negotiation, preparation, and execution of these presents, and of all other deeds and instrumts which may be necessary or proper for carrying the sd several agreemts into effect, shall be borne and paid as to — equal — shares thof by the sd A., and as to — equal — shares thof by the sd pties hto of the second pt: AND WHAS it has been

PREO. X.
 Agreement for assignment.
 Agreement for indemnity against debts;
 and transfer of remaining assets.
 Agreement as to costs.
 Further agreement.

PREC. X. further agrd that these presents shall contain such other provons as are hinafter exprd, NOW THIS INDRE WIT-
Witnesseth. NETH that in psuance of the sd agreemt in this behalf,
Consideration. and in conson of the sd sum of £B [£E], togr with the sd sum of £—— for interest thon from the date of the retiremt of the sd A. from the said ptnship (making togr £——) having been paid by the sd pties hto of the second pt to the sd A. on the execution of these presents (the rect whof the sd A. doth hby acknowledge), [and in conson of the sd sum of £F, with interest as afsd being secured by the sd pties hto of the second pt to the sd A. in mner afsd],
Assignment of leaseholds and fixed machinery, &c. the sd A. as beneficial owner (*see* p. 331, *note (d)*), doth hby assign and rele unto the sd pties hto of the second pt, their exs, ads, and assigns, ALL the pt, share, and interest, or pts, shares, and interests whatsoever of him the sd A., of and in all and singular the leasehd hereds and premes specified in the sd first schedule hto, and of and in all the engines and other erections and fixtures and plant in or upon the same respive premes which are affixed thto and pass with the land, and of and in the appurts thof, To HOLD the same premes UNTO the sd B., C., and D., their exs, ads, and assigns, for the respive terms and estes for which the same respive premes are holden, and subjt to the rents, royalties, reservations, covenants, and condons reserved and contd in and by the several leases and agreemts under which the same respive premes are holden, and to the mtges and incumbrances specified in the sd second schedule hto, but from all which mtges and incumbrances the same respive premes are as between the sd parties hto of the first and second pts, and for the ppose afsd, to be treated as exonerated in mner afsd: AND the sd A. doth hby covenant with the sd B., C., and D., their exs, ads, and assigns, that on the sd sum of £C. and interest being paid [secured] and such deed or bond of indemnity being executed and delivered as afsd, the sd A. his exs, ads, and assigns, will at any time or times thereafter upon the request and at the cost (except as hinbefore mentd) of

Habendum to continuing partners.

Covenant by retiring partner to transfer remaining assets.

the sd pties hto of the second part resply, and their respive exs, ads, or assigns, or any of them [but subjt and without prejudice to the sd intd mtge] execute, make, and do all such assignmts, releases, transfers, assurances, powers of attorney, instrumts, and acts whatsoever for assuring, releasing, or transferring to or vesting in them the sd pties hto of the second pt, their exs, ads, and assigns, all the pt share and interest, or pts, shares, and interests of him the sd A. his exs and ads of and in all and singular the moveable machinery and plant, stock in trade, book and other debts, credits, contracts, assets, and effects of the sd ptnship (other than the sd leasehd premes and fixed machinery, erections, fixtures, and plant hinbefore assigned and released) and the profits and goodwill of the sd business, and enabling them the sd pties hto of the second pt, their exs, ads, and assigns, to receive, recover, and obtain posson and the full benefit of the sd respive premes as by them shall be reasonably required: *Mutual covenants by A. and the parties of the second part*, that they resply have not at any time except as herein and by the books of the sd ptnship appears contracted any debt, &c., see p. 388: *Appointment by A. of* ^{Power of attorney.} "the sd pties hto of the second pt, and every of them their and every of their exs and ads," *attorneys to get in the debts, as in Precedent VII., mutatis mutandis*, "for the benefit of the psons or pson who may be entled thto." *Covenant by B., C., and D. to indemnify A. against rents and covenants of leaseholds, Vol. I., p. 398.*

IN WITNESS, &c.

[Two Schedules.]

XI.

PREC. XI.

BOND of INDEMNITY against partnership DEBTS on
Dissolution (a).

Recitals.

Partnership.

Dissolution.

Agreement.

Condition.

Joint and several bond from A. and B. to C., Vol. I., p. 201.

WHAS the sd A., B., and C. have carried on the business of, &c., under the firm of —, at — afsd, from the — day of —: AND WHAS by an indre bearing even date with these presents, and expd to be made, &c., it has been agrd that the sd ptnship shall be considered as determined and dissolved from the — day of —, and by the same indre (among other things) the sd C. has assigned and released unto the sd A. and B., their exs, ads, and assigns, all the este and interest of him the sd C. in the sd ptnship business, and the monies, debts, property, and effects belonging or due to the sd A., B., and C., as ptners, or in respect of the sd ptnship: AND WHAS it was pt of the arrangemt for the dissolution of the sd ptnship that the sd A. and B. should execute and give to the sd C. the above-written bond with such condon for making void the same as is hinafter contd: NOW THE CONDON of the above-written bond is such that if the sd A. and B. or one of them, their, or one of their hrs, exs, or ads, shall pay all and every the bills and notes of the sd ptnership, and all and every other the debt and debts and monies due or growing due from the sd A., B., and C., or any or either of them in respect of the sd ptnership, and discharge all the liabilities and perform all the engagemts of the sd ptnship to which the sd A., B., and C., or their respive hrs, exs, or ads, or any of them are, is, or shall be liable, and shall keep indemnified the sd C., his hrs, exs, ads, este and effects

(a) Though common, a bond has no advantage over a deed of covenant; see Vol. I., p. 200, note. As to the stamp, see p. 331, note.

against all actions, proceedings, losses, damages, costs, and expenses for or by reason of the non-payment, non-discharge, or non-performance of any of the sd bills, notes, debts, monies, liabilities, or engagements, or of any act or thing in anywise relating thto, Then the above-written bond shall be void, otherwise the same shall remain in full force and effect.

PREC. XI.

XII.

DEED of COVENANT by CONTINUING PARTNERS to secure the CAPITAL of a DECEASED PARTNER, which, pursuant to the articles of partnership, is to remain as a LOAN during the partnership term, the INTEREST being dependent on the rate of PROFITS (a).

PREC. XII.

PARTIES, A., B., and C., continuing partners, 1; D. and E., exors of deceased partner, 2. WHAS the sd A., B., and C. are carrying on the business of — in ptntship togr in con-

Recitals.

Articles of partnership.

(a) See the Partnership Law Amendment Act, 1865, 28 & 29 Vict. c. 86, s. 1; and as to the position of a secured creditor in such a case, see *Bullen v. Sharp*, L. R. 1 C. P. 86; *Holme v. Hammond*, L. R. 7 Ex. 218; *Molvo, March & Co. v. The Court of Wards*, L. R. 4 P. C. 419; *Ex parte Mills*, L. R. 8 Ch. Ap. 569; *Ross v. Parkyns*, L. R. 20 Eq. 331; *Sycrs v. Sycrs*, 1 App. Ca. 174; *Ex parte Sheil*, 4 Ch. D. 789; *Re Megevand*, 7 Ch. D. 511; *Ex parte Tennant*, 6 Ch. D. 303; *Pooley v. Driver*, 5 Ch. D. 458; *Elph. Introd. Conv.* 313. The payment of the deceased partner's share is often made by instalments, secured by a mortgage of the business premises. In that case, such of the recitals in the text as may be appropriate will be inserted, with the addition of recitals of the title of the firm to the freehold or leasehold property to be comprised in the security, and the deed, or deeds, by which the share of the deceased partner therein has been assigned to the continuing partners. The operative part of the deed will be in the usual form of a mortgage to secure the payment of money by instalments. See "MORTGAGES." The rights of a mortgagee, where the interest varies with the profits, under his mortgage, are not affected by the above Act; *Ex parte Sheil*, 4 Ch. D. 789, over-ruling *Ex parte Macarthur*, 40 L. J. Bkcy. 86.

As to Partnership Law Amendment Act.

PRINC. XII. continuation of the business lately carried on by the sd A., B., C., and K., *deceased partner*, under the style or firm of A. and Co., subjt to the stipulations contd in an indre, &c., whby it was among other things provd, *continue recital of articles of partnership stating the clauses following, duration of partnership, death of one partner not to dissolve firm, annual general account, provision for death of partner where his capital is to remain as a loan during the term: Death of K., and will appointing D. and E. exors and probate, Vol. I., p. 383*: AND WHAS at the death of the sd K. his share in the capital of the sd ptnship, as appearing by the general account taken by the ptners on the — day of — preceding his death, amounted to £—: AND WHAS all monies which were due or owing to the sd D. and E., as exs of the sd K., in respect of profits or interest on his capital up to his decease have been paid and satisfied, as the sd D. and E. do hby acknowledge: AND WHAS in psuance of the sd indre of, &c., the sd D. and E. have agrd with the sd A., B., and C., to leave the sd sum of £—, *share of capital*, as a loan to the sd firm of A. and Co., during the residue of the sd term of — years upon having the repaymt of the same with such interest as is hinafter mentd secured in mner hinafter appearing: NOW THIS INDRE WIT-NETH that in psuance of the sd agreemt, and in conson of the sd sum of £— being left by the sd D. and E. as a loan to the sd firm of A. and Co., *joint and several covenant by A., B., and C., with, D. and E., their exs, ads, and assigns*, that the sd firm of A. and Co. will pay to the sd D. and E., or other the legal personal representatives or representative for the time being of the sd K., their or his assigns, the sum of £— on the — day of —, *i.e., end of partnership term*, AND WILL in the meantime pay to them or him interest on the sd sum of £— at the rate of — per cent. per annum by quarterly paymts on the usual quarter-days, and a further sum by way of additional interest for each year, during which the sd firm of A. and Co. shall make any profits, equal to one equal — part of such

Share of deceased partner.

Profits of deceased partner paid out.

Agreement for loan.

Witnesseth.

Covenant to pay principal.

And interest.

profits as appearing by the annual general account, such further sum to be paid immediately after the signature of such account, but so that the sum (if any) payable by way of additional interest as last afd upon the taking of the next annual account shall be an apportioned pt calculated from the decease of the sd A. of the sum representing such share of profits as afd for the whole of the now current year : AND THAT it shall be lawful for the sd D. and E., or other the legal personal representatives or representative of the sd K., their or his assigns, to join in taking every annual general account of the sd firm during the sd term, and at all reasonable times to have access to and examine and take copies of or extracts from the books and accounts of the sd firm, [*or in lieu of last clause*, PROVIDED ALWAYS that the sd D. and E. or other, &c., *as above*, shall not be entitled to join in taking the annual general account of the sd firm, or to inspect the books or accounts of the sd firm, but the accounts of the sd business shall be made up by or under the direction of the ptners for the time being or one of them every year on the — day of —, or as soon after each such day as may be, and a proper account and balance-sheet shall be forthwith made out and furnished to the sd D. and E., or other, &c., *as above*, and shall if required by them or him be verified by the statutory declaration of one of the sd ptners, or some pson who shall have been employed in making up the accounts, and such account and balance-sheet when so verified shall be conclusive and binding upon the sd D. and E. or other, &c.]: PROVIDED ALWAYS and it is hby agrd that if at any time during the residue of the sd term of — years the business of the sd ptnership shall be carried on otherwise than strictly in accordance with the provons and stipulations contd in the sd indre of, &c., *the articles of partnership (b)*, or if the sd firm of A. and Co.

PARC. XII.

Power to
join in
taking
accounts.

Variation
where exe-
cutors are
not to join
in taking
accounts.

Proviso for
calling in
loan in
certain
events.

(b) Sometimes the surviving partners are made to covenant that the business of the partnership shall be carried on during the residue of the term in accordance with the provisions of the articles ; but the clause in the text is preferable.

PRINC. XII. shall at any time fail to perform and observe the covenants and stipulations herein contd and on their pt to be performed and observed [or if the net profits made in any one year by the firm of A. and Co., as appearing by the annual general account after paymt of interest on capital, and the fixed interest hinbefore covenanted to be paid on the sd sum of £——, shall not amount to the sum of £——], then, and in either of such cases it shall be lawful for the sd D. and E., or other, &c., their or his assigns, by notice in writing addressed to the firm of A. and Co. and left at the counting-house of the sd ptnship, to elect that the provons hinbefore contd as to payment of the sd sum of £—— and interest shall cease to operate, and that in lieu thof the sd sum of £——, or the unpaid pt thof, together with the interest, if any, at the rate of £—— per cent. per annum which shall have accrued but not have been pd thereon, and unless such notice shall be given on the —— day of —— *the day for taking the annual general account*, a further sum, instead of such share of profits as afsd, by way of additional interest at the rate of £—— per cent. per annum, to be calculated from the then last —— day of —— up to the day when such notice shall be given, shall as one aggregate debt, with interest thereon at the rate of —— per cent. per annum as from the date of such notice being given until payment, be pd on demand by the sd firm of A. and Co. to the sd D. and E., or other, &c., *as above*. PROVIDED ALWAYS, and it is hby agrd and decld that nothing herein contd shall constitute the sd D. and E. ptners in the sd firm of A. and Co.; PROVIDED ALSO that these presents and the secy hby created shall not be affected by any change in the psons constituting the sd firm of A. and Co. either by the death [or retirement] of any ptner [or the admission of any new ptner]; *Add, if desired, a covenant by A., B., and C. to indemnify the estate of K. against the liabilities of the firm, p. 333.*

Executors
not to be
partners.

Security
not to be
affected by
change in
firm.

IN WITNESS, &c.

PATENTS.(a)

CLAUSES IN ASSIGNMENTS AND LICENCES.

I. WHAS by letters patent under the Great Seal of the United Kingdom, bearing date the — day of —, the sole and exclusive licence, power, privilege, and authority of making, using, exercising, and vending an invention for improvemts in the manufacture of — in the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man, were granted to the sd A., *patentee*, his exs, ads, and assigns, for the term of fourteen years from the date of such letters patent, subjt to a proviso for avoiding such letters patent [if the complete specification, which had been filed as therein mentd, had not particularly described and ascertained the nature of the sd invention, and in what mner the same was to be performed], [*or, if the patent be granted on the filing of a provisional specification, say, in default of the sd A. filing a proper specification of the sd invention within six calendar months from the date of such letters patent,*] or in default of paymt of the fee and stamp duty of £50 before the expiration of three years from the date thof, and of the further fee of £100 before the expiration of seven years from such date.

Recital of
grant of
letters
patent.
Full form.

II. WHAS on the — day of — the sd A. duly filed a proper specification of the sd invention, pursuant to the

Recital of
complete
specifica-
tion being
filed.

(a) See the Patent Law Amendment Act, 15 & 16 Vict. c. 83; and 16 & 17 Vict. c. 5, and c. 115; and The Great Seal Act, 1880, 43 & 44 Vict. c. 10; 2 Dav. Prec. p. 130, *et seq.* notes *a* to *i*, p. 629 *et seq.* notes *a* to *f*; Johnson, The Patentees' Manual.

provo in that behalf contd in the hinbefore recited letters patent.

Title to
patent by
assign-
ment.

III. WHAS the sd A. is entled, by assignmt dated, &c., to letters patent under the Great Seal of the United Kingdom, dated &c., and originally granted to B. for "Improvemts in, &c."

Short reci-
tal of title
to patent.

IV. WHAS the sd A. is the inventor and patentee of an invention for "Improvemts in, &c.," the letters patent for which bear date, &c.

Provisional
protection.

V. WHAS the sd A. has obtained provisional protection, dated, &c., for an invention for "Improvemts in, &c."

Recital of
foreign
patent.

VI. WHAS the sd A. is entled to the sole and exclusive licence, &c., *as in recital of grant of letters patent* [in the Republic of France, which was granted to him by a *brevet d'invention* dated, &c., and which will expire on, &c.] (b).

Assign-
ment of
patent
absolute,
or by way
of mort-
gage.

VII. NOW THIS INDRE WITNETH that in psuance of the recited agreemt, and in conson of the sum of £—— now paid by the assignee to the patentee (the rect whof is hby acknowledged) [and of the royalties and paymts hinafter reserved and made payable, and the covenants and agreemts on the pt of the assignee hinafter contd], the patentee, as beneficial owner (c), doth hby assign and transfer unto the assignee ALL THAT the sd invention of improvements in ——, and the sd letters patent for the same, and the full and exclusive benefit thof, [and of any and every improvemt, extension, or renewal thof, and the right to apply for and obtain an extension or renewal thof,] and all rights, powers, and benefits to the sd invention, letters patent, and premes belonging, To HOLD the samē UNTO the assignee for the residue of the sd term of fourteen years granted by the sd letters patent [and any further term to be granted by any

(b) See, as to foreign and colonial patents, Johnson, *The Patentees' Manual*, Appendix.

(c) This implies the usual covenants for title on a sale or mortgage; see Vol. I., p. 366, note, Vol. II., p. 64, note; but not, of course, a covenant for the validity of the patent, for which see *infra*.

extension or prolongation of the same] [subj't to the paymt of the royalties and monies hinafter reserved and made payable, and to the performance and observance of the covenants and agreemts on the pt of the assignee, and condons hinafter contd] [*for a mortgage say*, subj't to the proviso hinafter contd for the redemption of the same premes].

VIII. THE PATENTEE [as beneficial owner (*d*)], doth hby Grant of licence. grant unto the licensee [the sole, full, and exclusive] licence to use and exercise the sd invention during the term of — years from the date of this licence, [*or*, the unexpired residue of the term of the sd letters patent, or any renewal or extension thof] and to sell and dispose of all — manufactured according to the sd invention, when and as the licensee shall think fit, for his absolute use and benefit.

IX. THE PATENTEE [as beneficial owner (*d*)], doth hby The same. Various restrictions. grant unto the licensee full [and exclusive] licence to use and exercise the sd invention [to the extent of — and with reference to — only] [for the ppose of manufacturing — only] [at any place or places within a radius of — miles from —, but not elsewhere] [in England only] during the term of — years from the — day of —, and to sell and dispose of all — manufactured [within the limits afsd, *or*, “in England” only] according to the sd invention, at any time during the sd term [or within six calendar months from the expiration thof].

X. THE LICENSEE shall pay to the patentee [yearly during the sd term, and so in proportion for any less time than a year, the sum of £—, as a fixed or minimum annual rent, by equal quarterly paymts, on the — day of —, &c., the first of such paymts to be made on the — day of — next, in respect of which sd annual sum of £— the licensee may manufacture or make [and sell] — [cwt. of] — according to the sd patent, and shall also pay to the patentee] for every — [cwt.] [in excess of — [cwt.]] of — manu- Covenant to pay royalties. Variations where there is a fixed minimum rent.

(*d*) This would imply covenants for title as on a sale, under the Conv. Act, 1881, s. 7, if the grant of a licence is a “conveyance” within the Act, s. 2.

PREC. X. further agrd that these presents shall contain such other provons as are hinafter exprd, NOW THIS INDRE WIT-
Witness- NETH that in psuance of the sd agreemt in this behalf,
seth. and in conson of the sd sum of £B [£E], togr with the
Considera- sd sum of £—— for interest thon from the date of the re-
tion. tiremt of the sd A. from the said ptnship (making togr
 £——) having been paid by the sd pties hto of the second
 pt to the sd A. on the execution of these presents (the rect
 whof the sd A. doth hby acknowledge), [and in conson of
 the sd sum of £F, with interest as afsd being secured by
 the sd pties hto of the second pt to the sd A. in mner afsd],
 the sd A. as beneficial owner (*see* p. 331, *note (d)*), doth
 hby assign and rele unto the sd pties hto of the second pt,
 their exs, ads, and assigns, ALL the pt, share, and in-
 terest, or pts, shares, and interests whatsoever of him the
 sd A., of and in all and singular the leasehd hereds
 and premes specified in the sd first schedule hto, and of
 and in all the engines and other erections and fixtures
 and plant in or upon the same respive premes which are
 affixed thto and pass with the land, and of and in the appurts
 thof, To HOLD the same premes Unto the sd B., C., and D.,
 their exs, ads, and assigns, for the respive terms and estes
 for which the same respive premes are holden, and subjt to
 the rents, royalties, reservations, covenants, and condons
 reserved and contd in and by the several leases and
 agreemts under which the same respive premes are holden,
 and to the mtges and incumbrances specified in the sd
 second schedule hto, but from all which mtges and incum-
 brances the same respive premes are as between the sd
 parties hto of the first and second pts, and for the ppose
 afsd, to be treated as exonerated in mner afsd: AND the sd
 A. doth hby covenant with the sd B., C., and D., their exs,
 ads, and assigns, that on the sd sum of £C. and interest
 being paid [secured] and such deed or bond of indemnity
 being executed and delivered as afsd, the sd A. his exs,
 ads, and assigns, wll at any time or times thereafter upon
 the request and at the cost (except as hinbefore mentd) of

Assign-
ment of
leaseholds
and fixed
machinery,
&c.

Habendum
to con-
tinuing
partners.

Covenant
by retiring
partner to
transfer
remaining
assets.

the sd pties hto of the second part resply, and their respive
 exs, ads, or assigns, or any of them [but subjt and without
 prejudice to the sd intd mtge] execute, make, and do all
 such assignmts, releases, transfers, assurances, powers of
 attorney, instrumts, and acts whatsoever for assuring,
 releasing, or transferring to or vesting in them the sd pties
 hto of the second pt, their exs, ads, and assigns, all the pt
 share and interest, or pts, shares, and interests of him the sd
 A. his exs and ads of and in all and singular the moveable
 machinery and plant, stock in trade, book and other debts,
 credits, contracts, assets, and effects of the sd ptnship (other
 than the sd leasehd premes and fixed machinery, erections,
 fixtures, and plant hinbefore assigned and released) and
 the profits and goodwill of the sd business, and enabling
 them the sd pties hto of the second pt, their exs, ads, and
 assigns, to receive, recover, and obtain posson and the
 full benefit of the sd respive premes as by them shall be
 reasonably required: *Mutual covenants by A. and the parties
 of the second part*, that they resply have not at any time
 except as herein and by the books of the sd ptnship appears
 contracted any debt, &c., see p. 333: *Appointment by A. of* ^{Power of}
 "the sd pties hto of the second pt, and every of them their ^{attorney.}
 and every of their exs and ads," *attorneys to get in the debts,*
as in Precedent VII., mutatis mutandis, "for the benefit of
 the psons or pson who may be entled thto." *Covenant by*
B., C., and D. to indemnify A. against rents and covenants
of leaseholds, Vol. I., p. 393.

IN WITNESS, &c.

[Two Schedules.]

and give him full and sufficient information, instructions, and assistance respecting the mode of working and using the same, and so far as practicable render the same available at the expense of the licensee, *or*, "assignee," for his benefit [within the limits aforesaid,] and the licensee, *or*, "assignee," shall be entitled to use and exercise the same without paying any further or other royalty, premium, or compensation to the patentee in respect thereof, [and the patentee shall forthwith communicate a full and perfect description of such improvement or improvements to the licensee, *or*, "assignee," and do every act which may be necessary or convenient for enabling him to obtain letters patent for vesting the exclusive right thereof in him or such other person or persons as he may appoint.]

Provision
as to in-
fringe-
ments.

XIX. IN CASE the said letters patent or any extension or renewal thereof shall be infringed, the patentee, *or*, "licensee," shall forthwith, after notice of such infringement, at his own costs, take all necessary proceedings for effectually protecting and defending the same, and in default of his so doing the licensee, *or*, "patentee," shall be at liberty by notice in writing, given to or left at the usual or last known place of business or residence of the patentee, *or*, "licensee," to determine this agreement.

The same.

XX. IN CASE the said letters patent [or any extension or renewal thereof] shall be infringed, it shall be lawful for the licensee, at his own costs, but in the name of the patentee, to take all necessary legal proceedings for effectually protecting and defending the same.

The same.

XXI. THE PATENTEE shall at all times during the continuance of this licence at his own costs and charges by all means in his power protect and defend the said letters patent from all infringements, whether within or outside the limits aforesaid, by any person or persons whomsoever, and, in default of his so doing, the rent and royalties hereby reserved shall cease to be payable, but this licence shall nevertheless remain in full force, and in case of the said rent and royalties so ceasing,

such cessation shall be taken as a satisfaction of the covenant by the patentee for such protection as last aforesaid, or any liability of the patentee in respect thereof.

XXII. THE LICENSEE shall not at any time or times hereafter dispute the validity of the said patent.

Licensee not to dispute validity of patent.

XXIII. THE LICENSEE shall not assign or transfer this licence or any part thereof, or grant any sub-licence to any person or persons whomsoever [without the consent in writing of the patentee].

Licensee not to assign or grant sub-licences.

XXIV. THE PATENTEE shall not at any time during the continuance of this licence use or exercise the said invention, or any such future improvement or improvements as aforesaid, or grant any licence to any other person or persons whomsoever to use or exercise the same or any such improvement or improvements [or to use any machine or machines comprising the same] [within the limits aforesaid] [for the purpose of manufacturing —] [without the consent in writing of the licensee].

Patentee not to use invention or grant other licences.

XXV. PROVIDED ALWAYS, and it is hereby agreed and decided, that this licence may be determined at any time after the first six calendar months by the patentee, or by the licensee, on giving to the other of them or leaving at his usual or last-known place of business or abode, three calendar months' previous notice in writing of his intention so to do, and at the expiration of such notice these presents, and all the covenants, agreements, and provisions herein contained shall cease and be void, but without prejudice to the remedies of either party for the recovery of any monies then due to him hereunder.

Power to either party to determine licence.

XXVI. PROVIDED ALWAYS, and it is hereby agreed and decided, that if the [rent], royalties, or sums hereby made payable, or any part thereof, shall at any time be in arrear or unpaid for twenty-one days after the same shall have become due (whether any legal or formal demand thereof shall have been made or not), or if the licensee shall become bankrupt or enter into any arrangement or composition with his creditors, or shall make

Power to determine licence on non-payment of royalties, &c.

default in performing or observing any of the covenants, agreemts, or condons hinbefore contd, and, on his pt, to be performed or observed, then, and in any such case, it shall be lawful for the patentee, by notice in writing given to the licensee, or left for him at his usual or last-known place of abode or business, to revoke this licence, which shall thereupon become void without prejudice to any right of action or remedy of the patentee for the recovery of any monies then due to him hereunder, or in respect of any antecedent breach of any of the covenants or agreemts of the licensee hinbefore contd.

Power to
patentee to
determine
licence if
not worked.

XXVII. IF THE LICENSEE shall discontinue the manufacture of —, according to the sd invention, or shall not manufacture [and sell] at least —, according to the sd invention, in any one year commencing on the — day of —, the patentee shall be at liberty by notice in writing given to the licensee or his sd successor, or left at his usual or last-known place of abode or business, to determine this licence, in which case the same shall cease and become void, but without prejudice, &c., *as in last form*.

Power to
patentee
to avoid
licence if
it shall be-
come
vested in
more than
one person.

XXVIII. PROVD ALWAYS, that if the licence hby granted, or the benefit thof, shall at any time during the sd term become vested in more than one pson [other than psons trading and using the sd licence togr as co-ptners] it shall be lawful for the patentee, by notice left at the place of business or the usual or last-known place of abode of any of such psons, to revoke this licence, in which case the same shall cease and become void, but without prejudice, &c., *as in form xxvi*.

Proviso
deter-
mining
licence on
death of
licensee.

XXIX. PROVD ALWAYS, that if the licensee shall die during the sd term then this licence shall become void, but without prejudice, &c., *as in form xxvi*.

Provision
as to stamp
duty.

XXX. PROVD ALWAYS, and it is hby agrd, that nothing herein contd shall render it incumbent on the patentee to pay the stamp duty payable for keeping up the sd patent at the end of the first three or seven years thof; but in the

event o the same becoming void by nonpaymt of such stamp duty, this licence and everything herein contd shall likewise become void, but without prejudice, &c., as in form xxvi.

xxxI. NOTHING HEREIN contained shall constitute a Agreement
ptnship between the sd pties [or their respive exs, ads, not to
or assigns]. create
partner-
ship.

xxxII. AND THE PATENTEE hby covenants with the assignee
[licensee] that, notwithstanding anything by the patentee Covenants
done, omitted, or knowingly suffered [the sd letters patent for title in
are now valid and subsisting, and that] the patentee now assign-
ment or
licence (a).
has power to assign [grant a licence to use] the sd letters
patent in mner afsd, and that the same shall be held, used,
and enjoyed by the assignee [licensee] without any interrup-
tion or disturbance, free from incumbrances. AND THAT
the patentee, and every pson claiming under or in trust
for him, will at all times, at the cost of the assignee
[licensee], execute and do all such assurances and acts for
further assuring the sd letters patent and premes to the
assignee for the residue of the sd term [for confirming the
licences hby granted], as by him may be reasbly required.

xxxIII. AND THE MTGOR hby covenants with the mtgee Covenants
that [the sd letters patent are valid and subsisting, and that] for title in
the mtgor now has power to assign the sd letters patent and mort-
gage (a).
premes unto the mtgee in mner afsd free from all incum-
brances; AND THAT the mtgor and every other pson claim-
ing any interest in the sd letters patent and premes will at

(a) As to implying covenants for title, see p. 350, note. If there be any doubt as to the validity of the patent, the covenant that it is valid will, if so intended, be omitted, and the following proviso added at the end of the deed:

PROVD ALWAYS, and it is hby agrd, that these presents shall not be construed as a warranty by the patentee of the novelty or utility of the sd invention, the original validity of the sd letters patent, or the sufficiency of the sd specification, or the filing thof.

all times, at the cost until foreclosure or sale of the mtgor, and afterwards of the pson or psons requiring the same, execute and do all such assurances and acts for further assuring the sd premes to the mtgee for the residue of the sd term, or any renewal or prolongation thof, and enabling him to obtain the full benefit thof as may be reasbly required.

Reserva-
tion to
patentee of
right to
grant other
licences.

xxxiv. NOTHING HEREIN contd shall, except as herein expressly provd, affect the right of the patentee to grant licences to any other pson or psons to use or exercise the sd invention [for the ppose of manufacturing — or otherwise] [at any place or places outside the limits afsd]. [Prov'd that no such licence shall be granted on terms more favourable or advantageous to the licensee or licensees than these presents.]

Covenant
by patentee
not to dis-
claim.

xxxv. THAT THE PATENTEE [MTGOR] will not at any time during the sd term enter a disclaimer (b) or memorandum of alteration of the sd letters patent [or of any renewal or prolongation of the same] without the consent in writing of the assignee, or, "licensee," or, "mtgee."

Covenant
by mort-
gagor to
pay stamp
duties.

xxxvi. THAT THE MTGOR will pay all stamp duties which may become payable in respect of the sd letters patent [or any renewal or prolongation of the same] on the first day on which the same resply shall become payable.

Interpre-
tation
clause (c).

xxxvii. IN THE construction of these presents the expression "the patentee" shall, whenever the context so requires or admits be deemed to include the sd A., his exs, ads, and assigns; and the expression "the assignee," or, "licensee," shall, whenever the context so requires or admits, be deemed to include the sd B., his exs and ads, [and "assigns," or, "permitted assigns"].

(b) See *Wallington v. Dale*, 7 Ex. 888.

(c) It is usually more convenient to place the interpretation clause at the beginning of the instrument. See next page.

PRECEDENTS.

I.

ASSIGNMENT of LETTERS PATENT. (a)

FORM. I.

PARTIES, A., *patentee*, hereinafter called the patentee, which expression shall include his exs, ads, and assigns, where the context so requires or admits, 1; B., *assignee*, hereinafter called the assignee, which expression, &c., as above, 2; *Recite title to patent*, p. 849 or 850: AND WHAS the patentee has agrd with the assignee for the sale to him of the sd letters patent and the exclusive and absolute benefit thof, for the sum of £——; NOW THIS INDRE WITNETH, &c., *assignment of patent*, p. 850.

IN WITNESS, &c.

II.

ASSIGNMENT of RIGHT of an INVENTOR to PATENT FORM. II.
 the INVENTION in FOREIGN COUNTRIES. VARI-
 TIONS, where the ASSIGNMENT extends to subsequent
 IMPROVEMENTS patented.

PARTIES, A., *inventor*, hereinafter called the patentee, which expression shall include his exs, ads, and assigns, where the context so requires or admits, 1; B., *assignee*, hereinafter called the assignee, which expression, &c., as above, 2; *Recite grant of letters patent in the United Kingdom*, p. 849: AND WHAS it has been agrd between the pties hto that the assignee

Recitals.
Agree-
ment.

(a) This must be registered under 15 & 16 Vict. c. 83, s. 35.

PREC. II. shall have the right of procuring patents or other like privileges for using the sd invention in the countries of, &c., or in such of them or such pts thof resp'y as he shall think fit, upon the terms and in the mner hinafter expd, and that the sole right of obtaining such patents or privileges and all the rights and interest of the patentee to and in the sd invention and the use thof in the several countries afsd, shall accordingly be assigned to the assignee in mner hinafter appearing : NOW THIS INDRE WITNETH that in psuance, &c., *consideration, receipt*, and in conson of the covenants and agreemts on the pt of the assignee hinafter contd, the patentee as beneficial owner (*see p. 350, note*), doth hby grant and assign unto the assignee, THE FULL and exclusive right in the name and as the attorney of the patentee, or otherwise, as the case may require, but at the costs of the assignee, to apply for and obtain patents or other like grants or instrumts for vesting in the assignee, or in such other pson or psons as he shall think fit, the sole and exclusive right and privilege of making, using, exercising, and vending the sd invention in the sd several countries of, &c. resp'y, or any of them or any pt thof resp'y, AND ALSO all the right and power of the patentee as such inventor as afsd or otherwise, to work, use, exercise, and vend the sd invention and every pt thof in the sd several countries resp'y, and every pt thof resp'y, To HOLD the same UNTO the assignee for his absolute use and benefit : AND EACH of them the patentee and assignee so far as the covenants and agreemts hinafter contd are or ought to be performed or observed by him and psons claiming under him doth hby covenant with the other of them, in mner following, (that is to say) :—

Wit-
nesseth.

Assign-
ment of
right to
obtain pa-
tents
abroad.

Habendum
to assignee.
Mutual
covenants.

Patentee to
furnish
specifica-
tion.

1. THE PATENTEE shall forthwith furnish to the assignee a true and correct copy of the specification of the sd invention as filed or about to be filed, and also shall forthwith enable the assignee to prepare a full and perfect description of the sd invention and the mode of working the same, so

as to enable him to obtain good and valid patents, grants, or instrumts, vesting in him the exclusive right and privilege of making, using, and exercising the sd invention and every pt thof, in the sd several countries of — or any of them. PREC. II.

[2. *Patentee to communicate further improvements to assignee*, p. 358, *mutatis mutandis*, saying, “do every act which may be necessary or convenient for enabling him to obtain the rights and privileges afsd in the sd several countries, and to procure patents, grants, or other instrumts in such respive countries, or any pt thof resply, for vesting the exclusive right thto in him, or in such other pson or psons as he may appoint for his absolute benefit.”] Patentee to communicate improvements.

8. IN CASE any such patent, grant, or instrumt as afsd, for securing the rights and privileges afsd in any of the sd countries, shall be granted or made to or in favour of the patentee, then and in every such case he shall forthwith or at any time thereafter upon the request and at the costs of the assignee, transfer such patent, grant, or instrument, and all the benefit thof, unto the assignee, or as he may direct, and in the meantime shall stand possessed thof in trust for him. Patentee to assign foreign patents to assignee.

4. THE PATENTEE shall also at any time, upon the request and at the costs of the assignee, execute and do every instrumt, act, and thing, which may be necessary or convenient for the ppose of enabling him to obtain every or any such patent, grant, or instrumt as afsd, and the full benefit of all the rights, privileges, and premes hinbefore assigned or transferred to him, or agrd so to be. Patentee to assist in obtaining foreign patents.

5. THE ASSIGNEE shall be entled to and have full power to dispose of, or deal with, all the patents, grants, instrumts, and premes so assigned, or transferred, or agrd so to be, as the sole and absolute owner and owners thof resply without being subjt to any control or interference whatsoever of or by the patentee. Assignee to have rights of absolute owner.

6. THE ASSIGNEE shall pay to the patentee a moiety of all the net gains and profits which the assignee shall at any Assignee to pay a moiety of

PREC. II. time or times hereafter obtain or receive from or by means
net profits of such patents, grants, or instrumts as afsd, or such of them
to patentee. as shall or may be obtained from or by means of the sd in-
 vention [or improvmnts], or any sales or licences, or other
 dispositions of or dealings with the same [(whether for the sd
 invention or any such improvmnts as afsd)], after paying and
 deducting all costs, charges, losses, damages and expenses
 whatsoever, which the assignee may pay or incur in or
 about the obtaining or procuring, or endeavouring to obtain
 or procure, such patents, grants, and instrumts, or any of
 them, or in or about bringing the sd invention, or any pt
 thof [or any such improvmnts as afsd], into use in the sd
 several countries, or any of them, or in or about any such
 sales, licences, or other dispositions or dealings as afsd,
 togr with interest at the rate of — per cent. per
 annum upon such costs, charges, losses, damages, and
 expenses resply, from the time of the paymt thof: And
 shall, on the 31st day of December in each year, when the
 amount of such net gains and profits as afsd, in the hands
 of the assignee and not previously accounted for and divided,
 shall amount to the sum of £—— or upwards, or within
 —— days thereafter, pay over one moiety of such amount
 to the patentee.

Assignee
to keep
accounts.

7. THE ASSIGNEE shall keep true and correct accounts of all
 such rects and disbursemnts as afsd, and all other material
 parlars relating to the premes, and at any time on demand
 furnish to the patentee a copy of such accounts, or of the
 portion or portions thof not previously furnished to him,
 and permit him to inspect the same accounts, and all
 documts in the posson or power of the assignee relating to
 the premes.

Assign-
ment not
to consti-
tute part-
nership.
Present
patent not
to be pre-
judiced.

8. [NOTHING HEREIN contd shall constitute a ptnship be-
 tween the sd pties.]

9. NOTHING HINBEFORE contd shall prejudice or affect the
 right of the patentee to his sd letters-patent for the sd
 invention in the United Kingdom.

IN WITNESS, &c.

III.

AGREEMENT for SALE of PATENT. (a)

FORM. III.

AGREEMENT made the — day of — BETWEEN A. Parties of, &c., hereinafter called the patentee, of the one pt, and B. carrying on business as — at, &c., hereinafter called the assignee, of the other pt.

1. THE PATENTEE agrees to sell and the assignee agrees to purchase the patentee's patent for —, dated, &c., for the sum of £— paid to the patentee by the assignee upon the execution of this agreement, the receipt whereof is hereby acknowledged, and the further payments hereinafter mentioned. Agreement for sale.

2. THE ASSIGNEE shall also pay to the patentee during the residue of the term of the said patent, if the assignee shall so long live and shall continue to carry on the aforesaid business, the sum of £— for every — of whatever size and description, manufactured according to the said patent, which shall be sold by the assignee. Royalty.

3. THE ACCOUNTS between the said parties shall be settled half-yearly on the — day of —, and the — day of —. Accounts.

4. IF THE ASSIGNEE shall discontinue the manufacture of or shall not manufacture and sell at least — in any one year, commencing on the — day of —, the patentee shall be at liberty by notice in writing given to the assignee, or left at his usual or last known place of abode in England, to determine this agreement. Power for patentee to determine agreement if patent not sufficiently worked.

5. Provisions as to infringement, p. 354.

6. IF THE said letters-patent shall be judicially determined to be invalid then these presents shall thenceforth become void but without prejudice to the right of the patentee to recover any monies then due to him hereunder. If patent invalid, agreement to be invalid.

(a) This should be registered under 15 & 16 Vict. c. 83, s. 35.

PREC. III.

On re-
tirement
or death of
assignee,
successor
to enter
into similar
agreement.

7. IF THE ASSIGNEE shall, before the expiration of the term of the sd patent, retire from the afd business or die he, or his representatives, shall within — months after such retirement or death, at his or their own expense, cause or procure his successor in the sd business to enter into a similar agreement with the patentee for the paymt to him during the residue of the sd term of the sd sum of — on all — manufactured according to the sd patent, which shall be sold by such successor, with a similar proviso for the event of such successor dying or retiring from the sd business: And in default of such substituted agreement being entered into within the time afd this present agreement shall become void, but without prejudice to the right of the patentee to retain any monies then already paid to him and to receive any monies then due to him hereunder: And the sd patent shall thereupon revert to and become the absolute property of the patentee.

IN WITNESS, &c.

IV.

PREC. IV.

MORTGAGE of LETTERS PATENT (a).

Parties.

PARTIES, A., hereinafter called the mortgagor, which expression shall include his exs, ads, and assigns, where the context so requires or admits, 1; B., hereinafter called the mortgagee, which expression, &c., as above, 2; *Recite the grant of letters-patent*, p. 349; *Filing of specification*, p. 349; *Agreement for loan*, p. 1; *First testatum covenant for payment of principal and interest after default as in p. 74*, Prec. I.; AND THIS INDRE ALSO WITNETH that in

Recitals.

Wit-
nesseth.

(a) To be registered under 15 & 16 Vict. c. 83, s. 35.

further psuance, &c., *assignment of letters-patent*, p. 350 (b); PREO. IV.
Proviso for redemption of the "sd invention, letters-patent,
and premes hby assigned," p. 18, *form II: Covenant* Covenant
by mortgagor, that he, the mtgor, will pay the respive by mort-
stamp duties of £50 and £100 for keeping up the sd patent gagor to
in the United Kingdom, at least two calendar months before pay stamp
the expiration of the prescribed periods of three years duties.
and seven years resply, if at the sd respive times any
money shall remain on the secy of these presents; AND To protect
FURTHER that he, the mtgor, will from time to time, so patent
long as any money shall remain on the secy of these presents, from in-
use his best endeavours to discover any infringemt now fringe-
already, or hereafter to be made of the sd letters-patent ments.
hby mtged, or any extension or renewal thof, and will
make known the same, when discovered, to the mtgee,
and will, if required in writing so to do by the mtgee,
either himself take legal proceedings for the ppose of stop-
ping such infringemt, or in case the mtgee shall take
such proceedings, will do everything in his power for the
ppose of rendering the same effectual, and will, whether such
proceedings be effectual or not, pay on demand the costs
of the mtgee relating thto as between solor and client;
AND FURTHER that in case the mtgor shall neglect or Power for
refuse to make the paymts afsd, or any of them, it shall mortgages
be lawful for the mtgee to pay the same, AND THAT all to make
monies or expenses which shall be paid or incurred by payments,
the mtgee in the exercise of any of the powers hinbefore to be
contd, with interest for the same at the rate of — per charged on
cent. per annum, from the time or respive times of the mortgaged
same having been paid or expended, shall be repaid by premises.
the mtgor to the mtgee on demand, and in the mean-
time shall be charged upon the sd premes hby mtged.
PROVIDED ALWAYS, and it is hby agrd that at any time Power for

(b) Substitute throughout "mtgor" and "mtgee" for "patentee"
and "licensee" in the forms.

PREC. IV.
 mortgagee
 to grant
 licences
 until
 default.

Power for
 mortgagee
 to grant
 licences
 after de-
 fault.

Power of
 sale.

or times before the mtgee shall have become entled to exercise the power of sale hinafter contd [vested in him by virtue of these presents, and the statute in that behalf] it shall be lawful for the mtgor, in the name and as the attorney of the mtgee, to grant licences for the use of the sd invention and letters-patent for such term or terms of years, upon such condons and in such mner as he may think fit, but so that the mtgor shall not be authorised to enter into any covenants in the name of the mtgee, or to subject him to any personal liability, and so that no exclusive licence shall be granted without the consent in writing of the mtgee, and so that on every such licence there be reserved the best rent or royalty that can conveniently be obtained, without taking anything in the nature of a fine or premium, and so that there be contd in every such licence a power to the mtgee to revoke the sd licence in case of non-performance of the condons therein contd, and on non-paymt of the rents or royalties thby reserved, and so that the licensee or licensees do execute a counterpart or duplicate thof, and do thby covenant for the due paymt of the rents or royalties thby reserved; *Power to mortgagee*, "at any time or times after he shall have become entled to exercise the sd power of sale, to grant licences (whether exclusive or absolute or unrestricted or not) for the use of the sd invention and letters-patent for such term or terms of years, upon such condons, and in such mner as he may think fit, and in conson of a sum or sums in gross, or any rents or royalties or otherwise"; [*Power of sale*, p. 28, form III. *mutatis mutandis*, unless omitted in reliance on the statute, see p. 22, note, extending the trusts of sale monies to, "any gross sum or sums, rents, or royalties received upon the granting or in respect of any licence or licences";] *mortgagee's indemnity clause*, p. 61.

IN WITNESS, &c.

V.

LICENCE to USE LETTERS PATENT, *with VARIATIONS* PREC. V.
for an EXCLUSIVE or RESTRICTED LICENCE, and for
the LICENSEES being PARTNERS or a COMPANY. (a)

PARTIES, A., patentee, (hinafter called the patentee, which expression shall include his exs, ads, and assigns, unless such construction is excluded by the context or is otherwise inconsistent with the provons herein contd) 1; B., [and C.,] or, "the — Company Limited," 2. Recite A.'s Recitals.
title to patent: AND WHAS the patentee has agrd with the Agree-
sd B., [and C.,] or, "the sd Co.," to grant him [them] a ment.
licence to use and vend the sd invention [to the extent
and subjt to the restrictions, covenants, and agreemts, and]
upon the terms hinafter expd and contd: NOW THIS Wit-
INDRE WITNETH that in psuance of the sd agreemt, nesseth.
and in conson of the [sum of £—— now paid by the sd
B. [and C.,] or, "the sd company," to the sd patentee (the
receipt whereof is hby acknowledged) and of the rent and]
royalties or sums hinafter reserved or made payable to the
patentee [and of the covenants and agreemts on the pt of the
sd B. [and C.] or, "the sd Co.," hinafter contd,] the patentee
doth hby as beneficial owner (b) grant unto the sd B., his exs, Grant of
ads, and [permitted] assigns (c), or, "the sd B. and C., and licence.
the survor of them, and the exs or ads of such survor, their
or his ptners or ptnr for the time being and [permitted]

(a) This should be registered under 15 & 16 Vict. c. 83, s. 35.

(b) This implies the same limited covenants for title as on a sale (see p. 350, note), assuming that the grant of a licence is a "conveyance" within the definition in the Conv. Act, 1881, s. 2.

(c) If the licence is not to be transmissible on the licensee's death, omit the words "exs, ads." If it is not to be assignable, omit "assigns;"

PREC. V. assigns" (b), or, "the sd Co. and their [permitted] assigns" (b), (all of whom are hereinafter included in the expression the licensee[s], unless such construction is excluded by the context or is otherwise inconsistent with the provons herein contd,) *continue grant of licence*, p. 351, No. VIII., or

Mutual
covenants. No. IX.; AND IT IS HBY mutually covenanted and agrd between and by the sd respive pties hto [and so that the liability of the sd B. and C. hereunder shall be joint and

Clause. several] as follows, namely: *Insert such of the clauses following as may be appropriate in numbered paragraphs, with the necessary verbal alterations for the case of several licensees or a company:—Covenant to pay rent and royalties*, p. 351; *Licensee to keep accounts and permit inspection*, p. 352; *Licensee to furnish accounts half-yearly and verify same*, p. 352; *To affix labels*, p. 352; *Or name-plates*, p. 353; *Power to patentee to inspect factories*, p. 353; *Licensee (d) not to use invention otherwise than according to licence*, p. 353; *Patentee to give licensee assistance*, p. 353; *Patentee to communicate improvements to him*, p. 353; *Provisions as to infringements*, p. 354; *Licensee not to dispute validity of patent*, p. 355; *Licensee not to assign or grant sub-licences*, p. 355; *Patentee (e) not to use invention or grant other licences*, p. 355; [Power to either party to determine licence, p. 355]; *Power to determine licence on nonpayment of royalties, &c.*, p. 355; *Power (e) to patentee to determine licence if not worked*, p. 356; [Power (f) to patentee to determine licence if it becomes vested in more than one person, p. 356;] [Proviso (g)

and if it is to be assignable only with consent of the patentee, insert "permitted."

(b) See note (c), preceding page.

(d) This clause will be omitted in an exclusive licence.

(e) This clause will be inserted if the licence is exclusive.

(f) This clause will, of course, be omitted if the licence is not transmissible, or is granted to two or more.

(g) This clause will, of course, be inserted only if the licence is not to be transmissible on the death of the licensee.

determining licence on death of licensee, p. 856 ;] Provision as to stamp duty, p. 856 ; [Covenants for title by A., p. 357]; [Reservation of right to patentee to grant other licences, p. 858]; Arbitration clause, see ARBITRATION, Vol. I., p. 148.

IN WITNESS, &c.

PREC. V.

VI.

LICENCE (*not exclusive*) by DEED POLL to USE a PATENT in consideration of a SUM paid down. A short form (a).

PREC. VI.

KNOW ALL MEN BY THESE PRESENTS that I, A., *patentee*, of, &c., do hereby in consonance of the sum of £—— now paid to me by B., of, &c., the rect whome I do hereby acknowledge, give liberty and licence to the sd B. to make, use, exercise, and vend the invention mentd or referred to in certain letters patent under the great seal of the United Kingdom, bearing date the —— day of —— for the term of —— years from the date hereof, but not so as to warrant the original validity of the sd letters patent.

IN WITNESS, &c.

VII.

AGREEMENT for WORKING a PATENT (c).

PREC. VII.

AGREEMENT made this —— day of —— BETWEEN A., Parties of, &c., of the one pt, and B., of, &c., of the other pt :

(a) This should be registered under 15 & 16 Vict. c. 83, s. 35.

(c) This should be registered pursuant to 15 & 16 Vict. c. 83, s. 35, as soon

PREC. VII. **WHAS** the sd A. is the inventor of and has obtained provisional protection for certain improvemts in —, and he has expended the sum of £—— in obtaining such provisional protection and manufacturing specimens of articles forming the subjt of the sd invention, and otherwise testing the same, and with a view to promote the success thof, and obtain letters patent, he has requested the sd B. to enter into the arrangemts hinafter expd: **NOW IT IS AGRD** as follows, viz:—

**Agree-
ment.**

**As to ex-
penses of
perfecting
and patent-
ing.**

1. **THE SD B.** shall expend a further sum of £—— in or towards testing and perfecting the sd invention, and obtaining letters patent for the same, including the costs of and relating to this agreemt, and each of the sd pties shall bear and pay one-half of any further expenses in addition to the sd last-mentd sum of £—— which may be incurred in testing and perfecting such invention, and obtaining the grant of such letters patent, and assigning the same as hinafter mentd, provd that the sd B. shall not be under any obligation to advance a larger sum in the whole than £—— in respect of the expenses hinfefore mentd.

**Inventor
to obtain
letters
patent and
vest same
in parties
as tenants
in com-
mon.**

2. **THE SD A.** in conson of the paymts agrd to be made by the sd B. as afsd, shall use his best endeavours to perfect the sd invention and to obtain the grant of the sd letters patent in his own name, and shall, whenever required after the granting of such letters patent, assign the same, togr with all benefits to be derived from the same or from the sd invention, and all improvemts hereafter to be made by the sd pties or either of them therein, or in the mode of making the articles which are the subjt thof, so that the same premes may be legally and beneficially vested in the sd pties hto as tenants in common in the shares following, namely, the sd A. — shares, and the sd B. — shares, and the

as the patent is completed. It is conceived that this agreement creates a partnership, see *Poolcy v. Driver*, 5 Ch. D. 458; *Ex parte Tennant*, 6 Ch. D. 303; *Ex parte Delhousse*, 7 Ch. D. 511; *Moore v. Davis*, 11 Ch. D. 261.

sd pties hto shall as well before as after the sd assignmt be entled to the same premes in the shares last afsd. PREC. VII.

3. IN CASE it shall appear to the sd pties advisable to work the sd patent, each of them shall advance and contribute one moiety of all monies which may be required for working the same, and of all costs and expenses of protecting and defending the same from infringemt or otherwise, but any expenses of obtaining renewals or extensions of the sd letters patent, or obtaining letters patent for any such improvemt as afsd shall be borne by the sd pties in the proportions in which they are to be interested in the same as afsd. Shares in which capital is to be advanced.

4. ALL ADVANCES and paymts made and to be made by the sd pties resply in respect of the said invention and premes (including the preliminary expenses of obtaining the sd letters patent, and testing and perfecting the sd invention), shall be repaid to them with interest at £—— per cent. per annum out of the proceeds to be derived from time to time from the sd invention and premes, (including the royalties and monies to be received in respect of licences, or for the sale of the sd patent and premes), and the balance of such proceeds after repaymt of the sd advances with interest and the expenses of working the sd patent and premes, shall, during the continuance of the arrangemt hby entered into for working the sd patent, be divided between the sd pties in the proportions in which they are to be interested in the sd patent and premes as afsd. Advances to be repaid and profits divided.

5. IN CASE it shall be determined not to work the sd invention and premes, or in case the proceeds thof shall not suffice for the repaymt of the sd advances with interest as afsd, neither of the sd pties shall have any claim against the other of them in respect of such advances and interest: Provd always that in case either pty shall at any time make advances in excess of the proportion in which he is bound to contribute towards the expenses and paymts afsd, he shall be entled to recover a moiety of such excess from the other of the sd pties with interest at the rate afsd, and such Provision in case of patent not being worked

PREC. VII. moiety and interest shall be a charge upon the share and interest of such other pty in the sd patent and premes.

Attention to business.

6. THE sd A. shall give as much time and attention as may be necessary for working and developing the sd invention, and shall use his best endeavours to promote the success thof, but the sd B. shall not be bound to devote more time and attention thto than he shall think fit.

Neither party to grant licences, or sell, or incur expenses without consent of other.

7. DURING THE continuance of the arrangemt hby made for working the sd patent and premes, neither of the sd pties shall, without the consent of the other of them, grant any licence for working the sd patent and premes, or sell or dispose of his share or interest in the same, or make any paymt, or incur any expenses, debts, or liabilities in respect of the premes, and in case any paymt, debt, or liability shall be so made or incurred without such consent, the same shall be deemed to be made or incurred on the separate and individual account of the pty making or incurring the same, and shall be borne by him exclusively, and the other of the sd pties shall be indemnified by him in respect of the same.

Accounts.

8. THE SD patent and premes shall be worked, and the business thof carried on in the name of the sd A. as patentee, and proper accounts shall be kept by him of all paymts made, and monies received, and liabilities incurred in respect thof, and of all other transactions relating thto, and all monies received in respect of the premes shall be paid into a bank to an account to be kept in the joint names of the sd pties, and shall not be paid out except upon the joint cheque of both pties. The books of account and other documts relating to the sd patent and premes shall be kept in the custody of the sd A., at his office, or such other place in London as he may think fit, but so that the sd B. may at any time have access to the same. The accounts relating to the sd patent and premes shall be made up and balanced half-yearly on the — day of — and — day of —, or oftener if the sd pties shall so agree.

9. THE ARRANGEMENT hby entered into for working the sd

patent and premes shall remain in force until the expiration of the term of the sd letters patent, or of any renewal or extension thof, or any further letters patent to be obtained for any such improvemts as afsd, in case both the sd pties shall so long live, but subjt to the right of either pty to determine the sd arrangemt at the expiration of the first seven years from the date hereof on giving three calendar months' previous notice in writing to the other of them, and in the event of the sd arrangemt being determined by the death of either pty or by notice as afsd, the sd letters patent, and any extension or renewal thof, and any such further letters patent as afsd, and the royalties or other proceeds to be thenceforth derived from any licences granted previously to such determination shall belong to the sd pties, or their respive exs, ads, or assigns, in the shares afsd, but each of the sd pties, his exs, ads, or assigns, shall thenceforth be entled to work and use the sd invention and premes, and to grant licences (not being exclusive licences) for working and using the same without being liable to account to the other of such pties, his exs, ads, or assigns, for the profits or royalties to be derived from the same.

PREC. VII.
Duration of
arrangement and
power to
determine.

10. PROVD ALWAYS that in case at any time before the sd arrangemt for working the sd patent and premes shall have been determined in mner afsd either of the sd pties shall be of opinion that the same is not likely to prove remunerative, and shall be desirous of abandoning the same, but the other of the sd pties shall desire to work, or continue the working of the same, the sd first-mentd pty may, by notice in writing to the other pty, declare his intention of abandoning the same, and the arrangemt hby made for working the same shall thereupon cease, and the pty giving such notice shall not be under any further liability in respect of the expenses of working the sd patent, or otherwise howsoever in respect of the premes (save as hinafter mentd), and the sd patent and premes, and the profits and proceeds (if any) thof, shall thenceforth be the absolute and sole ppty of the pty to whom such notice as afsd shall be given, and such assignmts and

Provision
where one
party de-
sires to
abandon.

PREC. VII. acts shall be executed and done as shall be necessary for vesting the same in him accordingly; Provd always, that in case any proceeds shall at any time thereafter be derived from the sd patent and premes, whether by means of the working thof or of licences, or the sale thof, then the pty giving such notice shall be entled to be repaid out of such proceeds the amount of the advances or paymts which shall have been made by him for any of the pposes afsd, and which shall not previously have been repaid, with interest at the rate afsd, rateably with the amount which shall for the time being have been advanced or paid by the other pty for such pposes, and shall not have been repaid, with interest thereon as afsd, but shall have no personal claim against such other pty in respect of such advances or paymts, except so far as such proceeds as afsd shall suffice for the repaymt thof as afsd. Provd that in case the monies advanced by either pty previously to the sd notice shall exceed the proportion which he shall have been bound to contribute as afsd, one moiety of such excess shall, in any event, be repaid to him with interest by the other pty.

Interpre-
tation.

11. THE MENTION in this agreemt of either of the sd pties hto by name, or otherwise, shall be deemed to include his exs, ads, and assigns, unless otherwise inconsistent with the terms and provons hereof.

AS WITNESS, &c.

RELEASES. (a)

I.

RELEASE by DEED POLL on *Payment of a LEGACY to a* PREC. I.
MARRIED WOMAN *charged on REAL ESTATE (b).*

TO ALL TO WHOM THESE PRESENTS SHALL
COME, A. of, &c., and B. his wife, send greeting. *Recite* Recitals.
will of X., bequeathing legacy to B., and charging it in aid of
his personal estate on certain real estate devised to C. for life,
remainder to D. in fee; Death of testator and probate, Vol. I.,
p. 333; Death of C.; AND WHAS the sd legacy of £——
bequeathed to the sd B. by the sd will, and all interest
thereon, has been paid to the sd A. with the consent of the
sd B., out of the psonal este of the sd testor, as the sd A.
and B. do hby acknowledge; NOW THESE PRESENTS
WITNESS that, in conson of the premes, the sd A. and B.,
as beneficial owners (c), do, and each of them doth, hby
rele and discharge all the sd messuages, lands, tenemts, and
hereds, situate at, &c., and all other (if any) the hereds

Wit-
nesseth.

(a) See 5 Dav. Prec., Part 2, p. 139; Elph. Introd. Conv., 474. As to stamps, see the Stamp Act, 1870. Sched. Tit. RELEASE.

(b) The husband is made a party, and the deed must be acknowledged by the wife, on the assumption that she was married and the testator died prior to 1883, so that the case is not within the Married Women's Property Act, 1882 (see p. 91, note); and that the legacy was not given to her for her separate use, expressly or by virtue of the repealed Married Women's Property Act, 1870, s. 7; otherwise she could release as a *feme sole*.

(c) This, it is presumed, implies covenants for title, by the releasing parties as to the legacy, being the subject-matter of the release, under the Conv. Act, 1881, s. 7; see Vol. I., pp. 367, 368, note, and Addenda.

PREC. I. charged with the paymt of the sd legacy, and also the sd D., his hrs, exs, ads, and assigns, and the este of the sd testor, and all other psons and ppty whom it doth or may concern, from the sd legacy or sum of £——, and the interest thof, and all claims and demands in respect thof.

IN WITNESS, &c.

II.

PREC. II. **RELEASE of PART of SETTLED ESTATES from a CHARGE of PORTIONS, and a TERM for securing them, and from a MORTGAGE by demise of the term, to ENABLE a SALE to be effected (a).**

PARTIES, B., C., and D., portionists, 1; L. and M., trustees of portions term, 2; P. and Q., mortgagees, 3; A., tenant for life, 4. Recite will of X., devising his real estates in strict settlement, with a power to tenants for life to charge portions, setting out the limitations as far as the estate for life of the person who exercised the power; Death and probate, Vol. I., p. 333; AND WHAS on the death of the sd X. the sd K. became entled as tenant for life to the possion of the — and hereds devised by the sd will; Recite appointment of portions to K.'s younger children, and creation of term vested in L. and M. to secure the same; state of K.'s family, shewing that A. is his eldest son, and that B., C., and D. became entitled to portions; Disentailing deed by K. and A.; Mortgage by demise by trustees of term to P. and Q. to secure £——, part of the portions; Resettlement subject to the portions and mortgage reducing A.'s estate to a life estate; Death

Recitals.

Title of
tenant for
life.

(a) The incumbrances might be transferred to other parts of the settled estate under the Settled Land Act, 1882, ss. 2 and 24, see MORTGAGES, p. 211, note, and Prec. LIII.; or a sum might be set apart to provide for the incumbrances, and the land sold free therefrom under the Conv. Act, 1881, s. 5, see Vol. I., p. 455, note.

of K. ; *State of mortgage debt*, p. 6 ; AND WHAS in psuance PREG. II.
of a power contd in the sd indre of, &c., *the resettlement*, the Contract
sd R. and S. have, at the request of the sd A., [*or, if the* for sale.
sale is effected by the tenant for life under the Settled Land
Act, 1882, as to which see Vol. I., p. 835, note, say, WHAS
the sd A. as tenant for life under the sd indre of, &c., *the*
resettlement, and by virtue of the powers of the Settled Land
Act, 1882, has] entered into a contract for the sale of the
hereds hby reled : AND WHAS, in order to enable the sd R. Agreement
and S. [the sd A.] to carry the sd sale into effect, the sd A. to release
has requested the sd B., C., and D., and also the sd P. and portions
Q., to rele the same hereds from the sd sum of £—— so and mort-
charged for portions as afsd, and the interest thereon, and gage.
from the sum of £—— so due as afsd for principal and
interest on the sd mtge, which they have resply agrd to do,
being satisfied that the residue of the hereds on which the sd
portions and mtge debt are resply charged are a sufficient secy
for the same, and the interest thereon resply (b) : AND WHAS Mortgagees
the sd L. and M. have agrd, at the request of the sd A., and and trus-
by the direction of the sd B., C., and D., and the sd P. and tees to
Q. have agrd, at the request of the sd A., to make such sur-
renders of the hereds so agrd to be sold as afsd as are
hinafter contd : NOW THIS INDRE WITNETH that in Witness-
psuance of the sd agreemt, and in conson of the premes, seth.
they the sd B., C., and D., as mtgees (c), at the request of
the sd A., do, and each of them doth, hby rele ALL AND Release of
SINGULAR the —— and hereds specified in the schedule hto portions.
from the sd sum so charged for the portions of the younger
children of the sd K. as afsd, and from all interest for the
same, And from all actions, proceedings, claims, and de-
mands, in respect thof, or of any pt thof resply, or for or
in respect of anything in anywise relating to the premes.
Further Testatum, They the sd L. and M., as trees (c), Surrender

(b) For a recital where other security is substituted, see the next Precedent.

(c) As to the statutory covenant against incumbrances implied by these words, see Vol. I., p. 366, note.

PREC. II. at the request of the sd A., and by the direction of the sd
of portions B., C., and D., do, and each of them doth, hby surrender
term. unto the sd A. and his assigns, **ALL AND SINGULAR** the sd
— and hereds specified in the sd schedule hto, *omitting the
general words and estate clause, see Vol. I., pp. 357, 359, notes,*
To the intent that the sd term of — years may merge and
be absolutely extinguished in the freehd and inheritance of
the sd premes. *Further testatum,* They the sd P. and Q., as
mtgees (d), do, and each of them doth, hby surrender and
Release of rele unto the sd A. and his assigns, **ALL AND SINGULAR** the
mortgage. sd — and hereds, &c., *as above*, freed and discharged from
all principal monies and interest due and owing to the sd P.
and Q. on the secy of and from all claims and demands
under the hinbefore recited indre of mtge of, &c., to the
intent that the sd term of — years thby created may
Proviso. merge, &c., *as above*: **PROVD ALWAYS** that nothing herein
contd shall prejudice or affect the secy of the sd P. and Q.,
under the sd indre of mtge as regards the other hereds
therein comprd.

IN WITNESS, &c.

The Schedule above referred to.

Schedule.

III.

PREC. III. **RELEASE** of **VARIOUS INCUMBRANCES** on **SETTLED**
ESTATES *contracted to be sold, the INCUMBRANCES*
NOT being PAID OFF, but OTHER SECURITY *having*
been SUBSTITUTED (a).

PARTIES, Incumbrancers of first, second, and third parts,
Recitals. *A. and B., trustees of settlement, of fourth part. Recite in-*

(d) See preceding page, note (c).

(a) See the last Precedent, and note (a) thereto.

cumbrances, and settlement subject thereto containing a power PRBC. III.
of sale ; AND WHAS a sum of money is still due to each of State of
the sd respive mtgees on their sd respive secs ; AND WHAS mortgage
the sd A. and B. have entered into a contract for the sale of debts.
the — and hereds hby released to X., of, &c., and in order Agree-
that they may be enabled to carry out and complete the sd ment.
sale, they have applied to the sd respive mtgees to rele the
sd premes so contracted to be sold as afsd from their sd
several mtge secs, according to the estes and interests of the
sd mtgees resply therein, which the sd mtgees have agrd to
do upon having other sufficient secy given to them resply
for their sd mtge debts, which secs have been already effected
and completed, as they, the sd mtgees, do hby resply acknow-
ledge : NOW THIS INDRE WITNETH that, in psuance Witness-
of the sd agreemt, and in conson of the premes, they, the sd seth.
pties hto of the first, second, and third pts, as mtgees (*see*
Vol. I., p. 366, note), according to their several estes and
interests in the hereds hinafter described and reled under
the sd respive indres of mtge, do resply hby grant and rele Release.
unto the sd A. and B., *Parcels, omitting general words and*
estate clause, see Vol. I., pp. 357, 359, notes, To HOLD the Haben-
same premes UNTO the sd A. and B., and their hrs, dis- dum.
charged from all and every the principal monies and interest To trus-
due and owing under the sd several mtge secs, and all claims tees.
and demands under or on account of the sd secs resply, To On trusts
THE USES, upon the trusts, and with and subjt to the powers of settle-
and provons in and by the hinbefore recited indre of settlemt ment.
decld and contd concerning the same premes, or such of
the same uses, trusts, powers, and provons as are now sub-
sisting and capable of taking effect.

IN WITNESS, &c.

IV.

PRAC. IV.

RELEASE of QUIT RENTS (*a*) and MANORIAL RIGHTS
affecting FREEHOLDS where both the MANOR and the
FREEHOLDS are SETTLED (*b*).

*PARTIES, A., lord of the manor, tenant for life, 1 ; B. and
C., trustees of manor, 2 ; D., tenant for life of freeholds held*

Provisions
of the
Conv. Act,
1881, as
to redemption
of
quit rents,
&c.

(*a*) The Conv. Act, 1881, s. 45, contains provisions enabling quit and other perpetual rents issuing out of land to be redeemed on the requisition of the owner of the land or any person interested therein with the aid of the Land Commissioners (as to whom, see the Settled Land Act, 1882, s. 48), who, on payment or tender to the person entitled to or having power to dispose of the rent or to give a discharge for the value thereof, of the amount certified by the Commissioners to be the value, are to certify that the rent is redeemed, and the land is to be thereby discharged. But the Act does not apply to reliefs and other manorial services. This enactment appears to impose on the Commissioners the duty of enquiring into the title to the rents, a function altogether alien from those hitherto discharged by them.

Provisions
of Settled
Land Act,
1882, as to
the sale
and purchase
of
quit rents
and seigniorial
rights.

(*b*) The Settled Land Act, s. 3 (2), empowers a tenant for life or other limited owner, as defined by ss. 2 and 58, where the settlement comprises a manor, to sell the seignory of any freehold land held of the manor, with or without any exception or reservation of mines or minerals or of rights as to mining, so as to effect an enfranchisement. The provisions stated in Vol. I., pp. 835, 844, notes, as to sales and conveyances under the Act, apply to enfranchisements. By s. 21 capital monies arising under the Act are authorised to be applied in the purchase (sub-s. (ii.)) of quit rents charged on or payable out of the settled land, and (sub-s. (v.)) in the purchase of the seignory of any part of the settled land being freehold. By s. 18, money required for enfranchisement (which appears to include the purchase of the seignory of freehold land (see s. 3 (ii.))), may be raised by mortgage. As to the mode in which quit rents, &c., affecting a settled estate, and purchased by direction of the tenant for life with capital monies of the settlement, are to be conveyed, see s. 24 of the Act, Vol. I., p. 856, note.

If the manor is vested in an infant tenant for life or in tail or fee, the release of the quit rents, &c., may be made by the "trustees" within the meaning of the Act, under s. 59 or 60 ; see a form of conveyance on sale by trustees of an infant's estate under the Act, Vol. I., p. 853.

Where the release of the rents is made by the trustees (having no estate) under an express power, the tenant for life or limited owner as defined by the Settled Land Act (if any) would be a necessary consenting party under s. 56 ; and the conveyance would be by revocation and appointment of the use. The

of the manor, 3; E. and F., trustees of freeholds, 4. Recite PRINC. IV.
 settlemt and events (c) by virtue of which A. is, "tenant for Recitals.
 life in possion," and B. and C. are, "trees with power of Settle-
 sale," of, "the manor of — in the County of —," or, ment of
 "are trees of the sd indre of settlemt for the pposes of the manor.
 Settled Land Act, 1882"; Will and events by virtue of which Will of
 D. is, "tenant for life in possion," and E. and F., "trees freeholds.
 with power of sale," of, "the lands described in the first
 schedule hto," or, "are trees of the sd will for the pposes of
 the Settled Land Act, 1882": AND WHAS, the lands de- Quit rents,
 scribed in the first schedule hto are freehds of inheritance &c.
 held of the sd manor of —, by the several yearly quit
 rents hinafter mentd, and reliefs and heriots and other ser-

following is the substance of the operative clause in such a case, and it will also serve to show how recitals may (as they in general should) be dispensed with:—

"WITNETH that in conson of £— as the pchase Variation
 money for the rents, reliefs, heriots, and services hinafter for release
 mentd, to the sd, trustees, as the donees of a power of sale under
 contd in a certain indre of settlemt, dated, &c., and made, &c., express
 paid by the sd, purchaser (the receipt, &c.), the sd, trustees, powers.
 as trees (see Vol. I., p. 366, note), in exercise of the sd power
 of sale, and of every other power, &c. [and at the request
 hby testified of the sd, tenant for life, as tenant for life under
 the sd settlemt] do hby absolutely revoke and make void ALL
 the uses, trusts, powers, and provons by the sd indre of
 settlemt expd and decl'd so far as relates to the rents,
 reliefs, heriots, services, and hereds hinafter appointed and
 assured, and do hby appoint that ALL those annual quit or
 other rents, &c., payable or to be rendered for or in respect of
 all those lands, &c., and of which lands and hereds the sd,
 purchaser, is seised in fee simple in possion as customary
 freehd of the manor of — in the county of —, and all
 other rents, &c., shall henceforth remain and be TO THE USE
 of the sd, purchaser, his hrs and assigns, To the intent, &c."

(c) See other forms of recitals, Vol. I., p. 846, note (b).

PREC. IV. vices: AND WHAS, by virtue of the powers vested in them
 Agree- resply under the Settled Land Act, 1882, the sd A. and D.
 ment. have mutually agrd for the rele by the sd A. by way of en-
 franchisemt of the sd quit rents, reliefs, heriots, and ser-
 Direction vices for the sum of £——: AND WHAS the sd A. has
 as to pay- directed that the sd sum of £—— shall be paid to the sd
 ment to trustees. B. and C. as such trees of the sd indre of settlemt, of, &c.,
 as afsd, and the sd D. has directed the sd E. and F. to pay
 the sd sum of £—— to the sd B. and C. out of capital
 monies in their hands as trees of the sd will applicable for
 that ppose, under the afsd Statute; *Recital as to production*
 Wit- *of muniments, Vol. I., p. 341*: NOW THIS INDRE WIT-
 nesseth. NETH, that in psuance of such agreemt and in conson of
 the sum of £—— paid psuant to such respive directions as
 afsd by the sd E. and F. to the sd B. and C. (the rect, &c.), the
 sd A. as beneficial owner (*see Vol. I., p. 365, note*), by virtue
 and in exercise of the powers vested in him under the afsd
 Statute, and of every other power in this behalf him enabling
 Release. doth hby, by the direction of the sd D., grant and rele unto
 Quit rents, the sd E. and F., and their hrs, ALL THOSE several yearly
 &c. quit or other rents of £—— and £——, and all reliefs and
 heriots payable or to be rendered on death or alienation or
 otherwise in respect of, and all manorial and seignorial ser-
 vices payable or accustomed in respect of or affecting all and
 singular the pieces of land and hereds described in the first
 Habendum schedule hto: To HOLD the same UNTO the sd B. and C.
 to uses of will. and their hrs, *to uses of will, see Vol. I., p. 858*, to the in-
 tent that the same may be merged in the sd lands and
 hereds, and that the same may be releed and for ever dis-
 charged thfrom, and from all claims and demands in respect
 thof. [*Add, if desired, proviso restricting A.'s liability on his*
implied covenants for title, Vol. I., p. 385;] *Acknowledgment*
and undertaking by A. to E. and F. as to muniments in second
schedule, Vol. I., p. 391.

IN WITNESS, &c.

[Two Schedules.]

V.

RELEASE of a perpetual RENTCHARGE on its PURCHASE by the OWNER of the ESTATE, so as to be kept on foot (a). PREC. V.

PARTIES, A., owner of rent-charge, 1; B., owner of estate, 2; Recitals. C., trustee, 3. *Recite creation of, and devolution of title to rent-charge, and B.'s title to estate*; AND *WHAS* the sd B. has paid to the sd A. the sd annuity, and all arrears thof to the day of the date hereof, as the sd A. doth hby acknowledge; AND *WHAS* the sd B. has agrd with the sd A. for the pchase of the sd annuity of £—— for the sum of £——, and the sd B. has requested that the same may be granted to the sd C., in trust for him the sd B., in mner hinafter expd: NOW THIS INDRE WITNETH that in psuance, &c., *Consideration, Receipt*, the sd A. as beneficial owner (see Vol. I., p. 365, note), at the request of the sd B. doth hby grant and assign unto the sd C., his hrs and assigns, ALL THAT the sd perpetual annuity or yearly rentcharge of £—— so given and devised to him, the sd A., his hrs and assigns, by the sd will of the sd —— deceased, [or, created by the sd indre of, &c.], as afsd, and all future claim and demand of him, the sd A., and his hrs, to, or concerning the sd annuity and premes, togr with all powers and remedies for enforcing and recovering paymt thof: To HOLD the same premes UNTO AND TO THE USE of the sd C., his hrs and assigns, UPON TRUST for the sd B., his hrs and assigns, and to be granted and disposed of from time to time as he or they shall direct and appoint, To the intent that the sd annuity, and the fee simple and inheritance thof, may be kept distinct from the sd messuages and lands charged with

Payment of rent-charge.
Agreement.
Witnesseth.
Grant.
Rent-charge.
Haben- dum.
To use of trustee to keep alive rent-charge.

(a) There being other outstanding rent-charges or incumbrances payable *pari passu*, or subsequently created by a previous owner. Compare the *Precedents* in Vol. I., pp. 420, 438.

PREC. V. the paymt thof, and the fee simple and inheritance thof, and not be merged or extinguished therein.

IN WITNESS, &c.

VI.

PREC. VI.

RELEASE to TRUSTEES of MARRIAGE SETTLEMENT (*comprising PERSONAL ESTATE in Possession and Reversion, and a POLICY on the Husband's Life*) on DISTRIBUTION of the Trust Funds, with the EXCEPTION of SHARES belonging to INFANTS. THE DEALINGS with the Trust Funds and other transactions being RECITED IN DETAIL, and an INDEMNITY being given to the TRUSTEES in respect of certain BREACHES of TRUST.

Recitals.
Settle-
ment.

PARTIES, A., husband and representative of deceased daughter, 1; B., eldest son and also executor of last tenant for life, 2; C., and D. his wife, a married daughter (a), 3; E. and F., trustees of daughter's settlement, 4; G., a son, 5; H. and I., trustees of settlement, 6; WHAS by an indre, dated, &c., and expd, &c. (being the settlemnt executed in conson of a marriage which was shortly afterwards solemnized between the sd K. and L.), certain pts or shares of and in the trust funds and ppty therein mentd, to which the sd L. was entld in mner therein appearing in reversion expectant on the decease of M. and N., her father and mother, were assigned to O. and P. upon the trusts thinafter declared, and it was thby decld that after the then intd marriage the sd O. and

(a) Where the married woman is absolutely entitled as a *feme sole* under the Married Women's Property Act, 1882 (as to which, see p. 91, note), or for her separate use under the old law, the husband need not concur, unless to guard against the possibility of his wife having made a disposition in his favour, or to enter into covenants.

PREC. VI.

P., their exs and ads, should stand possessed of the sd pts or shares thby assigned when the same should fall into possession and be received, and also of the sum of £—— then secured at interest by an indre ôf mtge therein referred to (which sum, togr with the secy for the same, had been transferred to the sd O. and P. by an indre bearing even date with the indre now in recital), and of the sum of £—— Annuities, which had also been transferred into their names, and of the monies, stocks, funds, and secs, representing the same respive premes, upon trust either to permit the same to remain in their actual state of investmt resply, or at any time with the consent of the sd K. and L., or the survivor of them, and after the death of such survivor at the discretion of the trees or tree for the time being, to sell, call in, and convert into money such respive trust premes, or any pt or pts thof resply, and to invest the proceeds, *set out remainder of the trusts for investment and varying investments*, and it was thby decld that the sd trees or tree should, *&c., recite trusts of the income for K. and L. during their lives, and of the capital after their decease for their issue as they appoint, and in default for sons at twenty-one and daughters at twenty-one or marriage, and the hotchpot clause*, and the sd indre now in recital contd the usual powers and provons for the advancemt [and maintenance] of the children of the sd then intd marre, [and for the accumulation of the surplus income of the expectant shares of such children] during minority and also a provon for the settlemt of any other ppty to which the sd L. was or might during the sd intd coverture become entled of the value of £—— or upwards (except as therein mentd), and by the same indre the sd K. assigned a policy of assurance on his life for the sum of £——, effected in the —— Office, and the monies assured by or to become payable under the same to the sd O. and P., their exs, ads, and assigns, to be held after the sd then intd marre upon trusts corresponding with the trusts thinbefore decld concerning the sd trust premes thinbefore settled, save as regards the ultimate trust thof in the event

PREC. VI.

State of
family.

Receipt
and invest-
ment of
reversion.

Appoint-
ment of
new
trustee.

Repayment
and in-
vestment

of such default or failure of children of the sd marre as therein mentd, and the sd indre now in recital contains a provon for the appointmt of new trees thof in the place of any tree or trees dying or desiring to be discharged and otherwise as therein expd; AND WHAS there were six children only of the sd marre of the sd K. and L., namely, Q. and R., both of whom died under the age of twenty-one years, and without having been married, a daughter S., who intermarried with the sd A. in the year —, and died in the year —, leaving issue two children, namely, T. and U., both of whom are living but are infants under the age of twenty-one years, a son, the sd B., who has attained the age of twenty-one years, a daughter, the sd D., who intermarried with the sd C., in the year —, and a son, the sd G., who has attained the age of twenty-one years; AND WHAS the sd M., the father of the sd L., died in the year —, and the sd N., the mother of the sd L., died in the year —; AND WHAS shortly after the death of the sd N. the sum of £— was received by the sd O. and P. as the net amount or value (after deduction and allowance of succession duty and expenses) of the pts or shares of and in the trust funds and ppty afsd, which were assigned to them by the sd L. by the hinbefore recited indre of settlemt, and thereout the sum of £— was paid by the sd O. and P. for costs which they had incurred in relation to the sd trust premes, and the residue thof, amounting to £—, was invested by them in the pchase of £— £— per cent. India Stock; AND WHAS by an indre, dated, &c., and expd, &c., the sd H. was, under the power for that ppose contd in the sd indre of settlemt as afsd, appointed a tree thof in the place of the sd O., who retired from the sd trust, and by the same indre and a certain other indre bearing even date thwith (being a transfer of the sd mtge), or by other appropriate means, the trust ppty then subjt to the trusts of the sd settlemt was thereupon duly transferred so as to be vested in the sd P. jointly with the sd H.; AND WHAS in the year — the sd principal sum of £— which was then invested on mtge as afsd, was repaid

to the sd P. and H., and was invested by them at the request of the sd K. and L., in the purchase of — shares of £ — each in the — Railway Co.; AND WHAS it is considered doubtful whether such last-mentd investmt was authorised by the trusts of the sd indre of settlemt; AND WHAS in the year — the sd P. and H., with the consent in writing of the sd K. and L., sold two of such railway shares, and applied the net proceeds thof, amounting to £ —, for the advancement of the sd G., under the power for that ppose contd in the sd indre of settlemt; AND WHAS the sd P. died in the year —, and by an indre, dated, &c., the sd I. was, in exercise of the sd power contd in the sd settlemt, duly appointed a tree thof in his place, and by the same indre the sd policy of assurance and the monies assured thby were assigned to the sd H. and I. upon the trusts asfd; AND WHAS the costs of and incidental to such appointmt and other expenses incurred by the sd trees, amounting to £ —, were raised by the sale of £ —, pt of the sd sum of £ — Annuities, and the sum of £ —, the residue of such Annuities, and the sd sum of £ — India Stock, and the sd remaining shares of the sd Railway Co were duly transferred to the sd H. and I; AND WHAS in the year — the sd H. and I., at the request of the sd K. and L., sold out eight of the sd railway shares, realising £ — and applied the same in paymt of certain debts which had been incurred by the sd B., who was then an infant: AND WHAS it is apprehended that such last-mentd application was a breach of trust or unauthorised, but the sd B. has agrd to treat such sum of £ — as pt of the sum of £ — hinafter recited to have been appointed to him and to give to the sd H. and I. such release in respect thof as is hinafter contd (b); AND WHAS the sd K. died in the year — without having joined the sd L. in making any appointmt under the power of joint appointmt among the issue of their sd marre, given to

PREG. VI.
of mort-
gage
monies.
Breach of
trust.
Advance-
ment of
child.
Appoint-
ment of
new trus-
tee.
Payment of
costs and
transfer of
trust
funds.
Sale of
part of
trust
funds, and
application
in breach
of trust.
Death of
tenant
for life
without
appointing.

(b) This provision is not within the Infant's Relief Act, 1874, 37 & 38 Vict. c. 62.

PRINC. VI.

Receipt
and in-
vestment
of policy
monies.

Appoint-
ment in
favour of
daughter.

Marriage
settlement
of daugh-
ter.

Appoint-
ment of
sum and
release of
life interest
to son.

Payment
thereof.

them by the sd indre of settlemt; AND WHAS shortly after the decease of the sd K., the sd trees received the sum of £—— in respect of the sum assured by the sd policy on his life and additions thto, and invested the same after paying thereout the sum of £—— for costs in the pchase of the sum of £—— £— per cent. India Stock, making with the sd sum of £—— the sum of £—— like Stock: AND WHAS by a deed-poll, dated, &c., the sd L. appointed that in case the then intd marre between the sd C. and D. should take place within six calendar months from the date of the deed now in recital, the sum of £——, pt of the the ppty subjt to the trusts of the sd indre of settlemt, should be held in trust for and absolutely vested in the sd D., her exs, ads, and assigns, subjt to the life-interest of the sd L. therein; AND WHAS by an indre, dated, &c., and expd, &c. (being the settlemt made on the marre of the sd C. and D.), the sd D. assigned the sd sum of £——, to which she was entld by virtue of such appointmt as last afsd, to the sd E. and F., their exs, ads, and assigns upon certain trusts therein decld concerning the same, and it was thby expressly decld that the sd investmt of the sum of £—— in the pchase of the sd railway shares was to be considered, so far as regarded the psons claiming under the indre now in recital, a proper investmt of the trust funds of the hinbefore recited indre of settlemt, *recite receipt clause, if any, in D.'s settlement; Ap- pointment by L. of £—— to B., and by the same indre the sd L. released her life-interest in the income of such sum of £—— to the sd B. to the intent that the same might be vested in him in possion, and be immediately raiseable; AND* WHAS shortly after the date of the lastly hinbefore recited indre, the sd H. and I. raised the sum of £—— by the sale of the sd sum of £—— Annuities, and of the sum of £—— India Stock, pt of the sd sum £—— like Stock, and after paymt thereout of the sum of £—— in discharge of the succession duty which would become payable in respect thof on the death of the sd L., less discount, they paid the sum of £——, being the residue thof to the

sd B., making, with the sum of £—— hinbefore recited to have been paid on account of the sd B., the sum of £—— so appointed to him as afsd; *Appointment by L. of £—— to T. and U. subject to her own life-interest; Will of L. appointing B. executor*; AND WHAS the sd L. died on, &c., without having made any further appointmt of any pt of the sd trust-funds under the power vested in her by the sd indre of settlemt as afsd; *Probate*: AND WHAS all the income which accrued from the sd trust-funds, or such of them as had, for the time being, fallen into possion, up to the death of the sd K. (including the apportioned pt belonging to his este of the income accruing due at his death) was duly paid to him, or his representatives, and all the income which subsequently accrued from the sd trust funds, except such pts thof as had been applied or disposed of as afsd, was duly paid to the sd L. during her life, as the sd B., as exor of the sd L., doth hby acknowledge; AND WHAS the sd H. and I. have received £—— in respect of income of the sd trust premes since the death of the sd L., and have paid £——, being the apportioned pt thof which accrued during the life of the sd L. to the sd B., as her exor, as he doth hby acknowledge, and have applied £——, the residue thof, in paymt of costs incurred in relation to the sd trust; AND WHAS the sd H. and I. lately sold the sum of £—— pt of the sum of £—— India Stock, then remaining in their names as afsd, and have thereout paid the remr of the succession duties amounting to £—— which became payable on the death of the sd L. in respect of the sd trust premes, and have retained the sum of £——, being the residue of the proceeds of such sale, in satisfon of the remaining costs and expenses incurred by them in relation to the sd trust and these presents; AND WHAS no ppty, real or psonal, has at any time been settled under the provons contd in the hinbefore recited indre for the settlemt of other or after-acquired ppty of the sd L., and no ppty, real or psonal, save as hinbefore appears, has at any time come to the hands of the sd H. and I. as trees of the sd indre or (so far as is known) become

PREC. VI.

Death of
tenant for
life.Applica-
tion of
income.Payment of
succession
duty and
costs.No after-
acquired
property.

PREC. VI. subj't to the trusts thof; AND WHAS the accounts of the sd
 Accounts. trees, showing all the parlars of their rects and disbursemts
 in relation to the sd trust este and premes, and the dealings
 thwith, from the date of the sd indre of settlem't to the pre-
 sent time, have been submitted to all the sd pties hto of the
 first five pts, and been carefully examined by them, and have
 been signed by such respive pties in testimony of their ap-
 proval thof; AND WHAS the sd H. and I. have retained the
 Retention of infants' shares and payment of daughter's share. sum of £—— India Stock, which, at the price of the day, is
 of the value of £——, to answer the sum so appointed to the
 sd T. and U. (*the infants*) as afsd, and have transferred the
 residue of the sd stock and —— shares of the sd Railway
 Co (being togr at the respive market prices of the day of
 the value of £——) to the sd E. and F., with the approba-
 tion of the sd C. and D., in satisfon of the sum appointed
 to the sd D. as afsd, as they, the sd C., D., E., and F., do
 Transfer of remaining funds to son. resply hby acknowledge; AND WHAS the sd remaining ——
 shares of the sd Railway Co, which, at the market price of
 the day, are of the value of £——, and which represent the
 portion remaining unappointed of the sd trust premes,
 belong wholly to the sd G., the sd pties hto of the first
 four pts being excluded by the effect of the hotchpot clause
 contd in the sd indre of settlem't from taking any share
 therein, and such last-mentd railway shares have accordingly
 been transferred by the sd H. and I. to the sd G., as he
 doth hby acknowledge; AND WHAS the sd several pties hto
 of the first five pts are satisfied with the application, disposi-
 tion, division, and distribution of the sd trust este and
 premes hinbefore recited to have been made, and that such
 division and distribution is in full satisfon of their respive
 shares and interests therein under the sd indre of settlem't
 [save as regards any further share or shares which may here-
 after accrue to them resply as hinafter mentd]; AND WHAS
 Agreement for release. before the several paymts and transfers lastly hinbefore
 recited were made, it was stipulated and agrd that the rele
 and indemnity hinafter contd should be made and given;
 NOW THIS INDRE WITNETH that in psuance of the
 Wit-
 nesseth.

sd agreemt, and in conson of the several paymts and ^{PREG. VI.} transfers so made as afsd, and of the premes, the sd A., B., C., D., E., F., and G. (c) [*or*, the sd respive pties hto of the ^{Release.} first five pts] (the sd B. concurring herein as well in respect of his own beneficial interest in the premes as in his character of exor of the sd L.), do and each and every of them doth hby absolutely rele, and for ever discharge the sd H. and I., and each of them, their, and each of their, hrs, exs, and ads [and also the sd O., his hrs, exs, and ads, este and effects, and the este and effects of the sd P. deceased (d)] from the monies, stocks, funds, shares, and secs so paid or transferred by the sd H. and I., or the trees for the time being of the sd indre of settlemt to the sd B., E., F., and G., as hinbefore mentd, and all other the trust este, ppty, and premes comprd in or which is or has at any time been subjt to the trusts of the sd indre of settlemt, and the interest, dividends, and income thof, and every pt thof resply, and from all actions, proceedings, claims, and demands, in relation thto, or otherwise under the trust of the sd indre of settlemt [or any sale, investmt, paymt, allowance, act, or thing, whatsoever at any time made, done, executed, or omitted or neglected by the sd H. and I., or the trees or tree for the time being of the sd settlemt, or any or either of them, in or about the execution of the trusts thof, whether hinbefore specifically mentd or referred to or not], or for or in respect of anything relating to the premes; AND THIS INDRE ALSO WITNETH that in psuance ^{Covenant of indemnity} of the sd agreemt, and in conson of the premes, the sd A.,

(c) The trustees of the sub-settlement might, in the absence of express authority in their settlement to give a release, object, and they could not be required, to do so (see *Re Cater*, 25 Beav. 366); in that case they will concur in the deed merely for the purpose of acknowledging the receipt of the share paid to them. Large powers of settling accounts, compromising and giving releases, &c., are given to executors and trustees by the Conv. Act, 1881, s. 37, which is substituted for 23 & 24 Vict. c. 145, s. 30, and applies to trusts created before as well as since the Act.

(d) Words releasing retired, and the estates of deceased, trustees are commonly and properly inserted.

PARO. VI. B., C., D., and G., do hereby jointly, and each of them doth hereby severally covenant with the sd H. and I., their, and each of their, exs and ads, that they, the sd covenanting parties, and every of them, their and every of their, hrs, exs, and ads, will at all times hereafter, keep indemnified the sd H. and I., and each of them, their, and each of their, hrs, exs, and ads, and also the sd O., his hrs, exs, and ads, este and effects, and the este and effects of the sd P., deceased, from all actions, proceedings, claims, and demands on the pt of any person or persons whomsoever, and all costs, damages, and expenses whatsoever by reason of the investmt of the sd sum of £—— in the purchase of the sd railway shares, or the subsequent retention of the sd investmt, or any pt thereof. *If*

Covenant
of indemnity
against
breach of
trust.

(e) Where one of the shares under a settlement or will has been settled by an instrument not condoning a breach of trust previously committed, a covenant of indemnity by some of the persons *sui juris* interested under the sub-settlement should be inserted, as follows: "AND THIS INDRE FURTHER WITNETH that, in pursuance of the sd agreement in this behalf, and in consonance of the premises, *joint and several covenants by covenantors with trustees*, that they the sd covenanting parties, and every of them, their, and every of their, hrs, exs, and ads, will at all times hereafter keep indemnified, the sd, *trustees*, and each of them, their, and each of their, hrs, exs, and ads, and also the este and effects of the sd —— deceased, from all actions, proceedings, claims, and demands, whatsoever, on the pt of any person or persons claiming under the sd indre of settlement of, &c., *the sub-settlement*, by reason, or in respect of [the sd investmt in railway shares, or the retention of such investmt, *or as the case may be*], and from all costs, damages, and expenses, occasioned by any such action, proceeding, claim, or demand." A general covenant of indemnity by the beneficiaries (each as to his own share) is sometimes added, in the following form, but this is of little, if any, value, unless it be as a protection to the trustees against the possibility that incumbrances may have been created on some of the shares, of which notice may have been given, but that, owing to a change of trustees or solicitors, or otherwise, such notice has not reached the present trustees. As to

the appointment to T. and U. (the infants) was not absolute, so that a further share may accrue to the releasing parties, add, PRINC. VI. Proviso when further shares may accrue to the releasing parties.
 PROVID ALWAYS, and it is hereby agreed and decided that the release hereinbefore contained shall not extend to any share or shares of the said trust property which may hereafter accrue to any of the said parties hereof of the first five parts, or their respective executors, administrators, or assigns, by reason of the said T. and U., or either of them, dying without attaining a vested interest under the said deed of appointment of, &c.

IN WITNESS, &c.

the variations in brackets having reference to married women, see p. 384, note :

"AND THIS INDRE ALSO WITNEETH that, in pursuance of the said agreement, and in consonance of the premises, each of them, the said, *covenantors*, as far as relates to the share to which he [or she] [or his wife] is, or claims to be, entitled in his [or her] own right [or in right of his wife] in the said trust premises, doth hereby covenant with the said, *trustees*, and each of them, their, and each of their, heirs, executors, and administrators, that they, the said covenanting parties, and every of them, their and every of their, heirs, executors, and administrators, will, from time to time, and at all times hereafter, keep indemnified, the said, *trustees*, and each of them, their, and each of their, heirs, executors, and administrators, and also the estate and effects of the said —, deceased, from all actions, proceedings, claims, and demands, in respect of the monies, stocks, funds, shares, and securities so paid, or transferred by the said trustees, as hereinbefore recited, or other the trust estate property and premises comprised in, or now or at any time subject to the trusts of the said indre of settlement of, &c., or the interest, dividends, or income thereof, or any part thereof respectively, or otherwise, under the trusts of the said indre of settlement [or any sale, investment, payment, allowance, act, or thing whatsoever, at any time made, done, executed, or omitted by the said trustees or trustee for the time being of the said settlement, or either or any of them, in or about the execution of the trusts thereof, whether hereinbefore specifically mentioned, or referred to,

VII.

PREC. VII.

**RELEASE and general COVENANT of INDEMNITY to
TRUSTEES of settlement comprising PERSONALTY
and REAL ESTATE conveyed in TRUST for SALE.**

Recitals. *PARTIES, A., son, 1; B. and C., his wife, daughter, 2;
Settlement. D. and E., surviving trustees, 3. Recital of conveyance of real
estate in trust for sale and settlement of even date on marriage
of F. and G. settling £—— — Annuities, and proceeds of
sale of real estate on wife and husband successively for life, with
remainder as wife should appoint, with remainder for children
equally at twenty-one, &c., and power of advancement, and
containing covenant by L., wife's father, to pay gross sum on
his death, with interest in meantime to be held on similar
trusts; AND WHAS the sd G. died on the —— day of ——
without having exercised the sd power of appointmt by the
sd indre of settlemnt given to her as afsd; Death of F.,
Family. having made a will appointing A. executor; Probate; AND
WHAS there have been issue of the sd marre between the sd
F. and G., three children, and no more, namely, the sd A.,
who has attained the age of twenty-one years, the sd C.,
who intermarried with the sd B. on the —— day of ——,
and has since attained that age, and H., who attained the
age of twenty-one years on the —— day of ——; AND
WHAS the sd L. died on, &c., in the lifetime of the sd G.,
and the sd sum of £—— by the hinbefore recited indre
covenanted to be paid by him, the sd L., was on the ——
day of —— paid to the sd trees, and invested by them on
the —— day of ——, in the pchase of —— debentures of
£—— each of the —— Railway Co; AND WHAS the interest
payable during the life of the sd L., on the sd principal sum*

**Death of
tenants for
life.**

**Death of
wife's fa-
ther, and
payment
and invest-
ment of
sum se-
cured by
his cove-
nant.**

or not], and from all costs, damages, and expenses, to be
occasioned by any such action, proceeding, claim, or demand,
as afsd, or otherwise in respect of the premes."

of £——, and all the interest payable thereon after his de- PREG. VII
 cease, was duly paid by him or his exor, and was received
 by the sd G.; AND WHAS in the year —— the sum of £——, Advancem-
 pt of the sd sum of £—— ——— Annuities comprd in the sd
 indre of settlemt, was, with the consent in writing of the sd
 F., sold by the sd trees, and the proceeds thof applied for the
 advancemt of the sd A.; *Death of H., having made a will
 bequeathing her residuary estate, "which included her share
 and interest under the sd settlemt," to A. and C. equally,
 and appointing A. executor; Death and probate; Deaths
 of I. and K., two of the trustees, and appointment of D. and
 E. trustees in their place of the settlement and deed of even
 date, and transfer of trust estate; Death of M., the remaining
 original trustee; AND WHAS the whole of the hereds by the* Real estate
 not sold.
 sd indre of even date with the sd settlemt conveyed in trust
 for sale as afsd, have been retained unsold; AND WHAS the Conversion
 of stock by
 Act of Par-
 liament.
 sd £—— ——— Annuities were in the year —— converted by
 Act of Parliament into £—— ——— per cent. Annuities; AND
 WHAS under the trusts of the sd indre of settlemt (as hin- Shares in
 which
 estate divi-
 sible.
 before appears) upon the decease of the sd F., the sd A.
 became entled in possion to one equal third pt of the sd
 trust ppty (subj to bringing into account the sum of £——
 applied for his advancemt as afsd, and to the paymt of suc-
 cession duty), and the sd C., or the sd B. in her right,
 became entled in possion to another equal third pt thof
 (subj to succession duty); AND WHAS the funeral and testa- As to share
 of deceased
 child.
 mentary expenses and debts of the sd H. have been fully
 paid and satisfied, and by virtue of the bequests contd in
 her sd will, the sd A., and the sd C., [or the sd B. in her
 right,] are beneficially entled in equal shares to the one-
 third share of the sd H. in the sd trust ppty (subj to
 succession duty, and subj also to the paymt of the legacy
 duty payable under the will of the sd H.); AND WHAS all Income.
 the dividends and rents of the sd trust ppty up to the
 death of the sd G., inclusive of the apportioned pt of the
 dividends and rents which became due after her decease,
 were duly paid to her or to the sd F., as her admor, and all

PRINC. VII. dividends and rents thof subsequently to such death, and up to the death of the sd F., inclusive of the apportioned pt of the dividends and rents accruing after his death, were duly paid to him or the sd A., as his exor, as the sd A. doth hby acknowledge; AND WHAS the sum of £—— pt of the sd sum of £—— — Annuities, has been sold by the sd D. and E., and the proceeds thof, togr with the dividends and rents, amounting to £——, which have accrued on the sd trust ppty since the death of the sd F., have been applied in paymt of the succession duty payable in respect of the sd trust ppty and the costs of and incidental to the preparation and execution of these presents or otherwise relating to the winding up of the sd trust; AND WHAS all legacy duty payable under the will of the sd H. has been duly paid; AND WHAS the sd hereds situate at —— have been valued by —— at the sum of £——, which sum it has been agrd shall be taken as the value thof for the ppose of the division of the sd trust ppty; AND WHAS the market value of the sum of £—— — Annuities (being the sum remaining after such sale as afsd), and of the sd £—— Railway Debentures at the price of the day is £—— and £—— resply; AND WHAS it has been agrd that the sd hereds and the sum of £—— — Annuities, which togr amount in value to the sum of £—— (being the amount of the total share of the sd A. in the sd trust ppty after accounting for the sum of £—— applied for his advancemt as afsd,) shall be appropriated to him, and that the sum of £—— — Annuities and the sd sum of £—— Railway Debentures, amounting togr in value to the sum of £—— (being the amount of the total share of the sd C. in the sd trust premes), shall be appropriated to her; AND WHAS by an indre bearing even date hwith, and expd, &c., the sd hereds have been conveyed by the sd D. and E. with the concurrence of the sd B. and C. to the sd A. (a); AND WHAS

Payment of duties and costs.

Valuation of trust property.

Agreement for division of estate.

Conveyance of real estate to son.

(a) The election of all the parties to take the property as real estate discharged from the trust for sale would be evidenced by the conveyance, which it seems must be acknowledged by the married woman for that purpose, unless she is entitled for her separate use under the old law, or the Married Women's

the sd sum of £——— Annuities has been transferred by the sd D. and E. to the sd A., and the sd sum of £——— Annuities and £——— Railway Debentures have been transferred by the sd D. and E. to the sd B., with the consent of the sd C., as they the sd A., B., and C., do hby acknowledge; AND WHAS, before the conveyance and transfers afd were made, it was agrd that the rele and indemnity hinafter contd should be given and executed: NOW THIS INDRE WITNETH that in psuance of the sd agreemt and in conson of the premes the sd A. (as well in respect of his beneficial interest as in his character of exor of the sd H. and F. resply), and the sd B. and C. do and each of them doth hby rele and discharge the sd D. and E., and each of them, their, and each of their, hrs, exs, and ads, and also the estes and effects of the sd I., K., and M. resply, from the sd respive sums of £——— and £——— Annuities, and £——— Railway Debentures so transferred to the sd A. and B. resply as afd, and from the sd hereds and the monies to arise from the sale thof, and from all actions, proceedings, claims, and demands whatsoever, for or in respect of the same resply, or the trust ppty comprd in or at any time subjt to the trusts of the sd indre of settlemt or the sd indre of even date thwith, or the dividends, interest, rents, or annual produce thof, or anything in anywise relating to the trusts of the sd settlemt or the sd indre of even date thwith, or the premes (b): AND THIS INDRE FURTHER WITNETH that in psuance of the sd agreemt and in conson of the premes the sd A. and B. do hby jointly and severally covenant with the sd D. and E., their exs and ads, and with each of them, his exs and ads, that they the sd covenanting pties resply will at all times hereafter effectually keep in-

PREC. VII.

Transfer
of stocks.Agreement
for release.

Release.

Covenant
of indem-
nity (c).

Property Act, 1882 (as to which, see p. 91, note); *Franks v. Bollans*, L. R. 3 Ch. Ap. 717 (compromised after the hearing before the Lords Justices; see *Re Clinton's Trust*, L. R. 13 Eq. 301).

(b) For a fuller form of release, see the last Precedent.

(c) As to the insertion of a general covenant of indemnity, see above, p. 392, note.

TRAC. VII. demnified the sd D. and E., and each of them, their and each of their, hrs, exs, and ads, against all actions, proceedings, claims, and demands on the pt of any pson or psons whomsoever, and from all costs, damages, and expenses in respect of the trust este and ppty now or at any time comprd in or subjt to the trusts of the sd indre of settlemt, or the dividends, interests, rents, or annual produce thof, or any pt thof resply, or anything done or omitted by the sd D. and E., or the sd I., K., and M., or any of them, in the execution of the trusts of the sd indre, or anything in anywise relating to the premes.

IN WITNESS, &c.

VIII.

PREC. VII

RELEASE to the TRUSTEES of a MARRIAGE SETTLEMENT on the FINAL DISTRIBUTION of the trust funds.
A SHORT FORM. *The DEALINGS with the trust funds being SHEWN by a SCHEDULE.*

Recitals.
Settle-
ment.

PARTIES, A. "and B., a daughter, his wife," 1; C. and D., trustees of B.'s settlement, 2; E., a son, 3; F., a son, 4; G., executor of last tenant for life, 5; K. and L., trustees of settlement, 6: WHAS by an indre dated, &c., and expd, &c., (being the settlemt made on the marriage of the sd M. and N.), it was decl'd that the sd X. and Y., or other the trees or tree for the time being of the sd indre, should after the sd marriage either allow the stocks, funds, and secs therein mentd, the parlars whof are specified in the schedule hto, to remain in their actual state of investmt, or should at any time or times, with the consent of the sd M. and N., or of the survivor of them, and after the death of such survivor, at the discretion of the sd trees or tree for the time being, sell

the same, but as to certain pts thof, which were then rever- PREC. VIII.
sionary or contingent, not until after the same should have
fallen into possion, and invest the proceeds in any of the
secs therein mentd, which included, among others, the
several secs into which the investmts of the sd trust premes
were from time to time transposed, as appears from the sd
schedule hto, and should, &c., *trusts to pay income to M.*
and N., and the survivor for life, remainder for their issue as
they or survivor appoint, in default for children at twenty-one,
&c., and hotchpot, advancement, maintenance, and accumula-
tion clauses ; Recitals as to issue of marriage and marriage of
daughter ; Appointment of K. and L. trustees in place of X.
and Y. on their retirement, and transfer of trust-estate ; Ap-
pointment by M. and N. of part of trust funds to B. on her
marriage, and assignment thereof to C. and D., her trustees ;
Death of M. ; Appointment by N. after M.'s death to E. ;
Will of N. appointing G. executor, death and probate ; AND Explana-
WHAS the first pt of the schedule hto contains a full and tion of
parlar account and statemt of the trust-este and ppty schedule.
originally comprd in or subjt to the hinbefore recited indre
of settlemt of, &c., and of all sales and transpositions of the
investmt thof, and of all the rects, paymts, and disbursemts
of the sd trees or tree for the time being, in respect of the
capital of the sd trust este and premes, and also (since the
decease of the sd N.) in respect of the income thof ; AND
WHAS the second pt of the sd schedule shows the parlars of
the trust este and ppty now remaining subjt to the trusts of
the sd settlemt, and the mode in which the same is distri-
butable ; *Add recitals as to any matters requiring to be*
specially noticed ; AND WHAS the sd pties hto of the first Approval
five pts have carefully examined the accounts contd in of ac-
the sd schedule hto, and are satisfied thwith ; AND WHAS counts.
all income payable to the sd M. during his life, and since Applica-
his decease to the sd N., in respect of the sd trust premes, tion of
has been duly accounted for and paid, as the sd G. doth income.
hby acknowledge ; AND WHAS the sd K. and L. have, at the Agreement
request of the sd several pties hto of the first four pts, for distri-
release.

PREC. VIII. agrd to make the several paymts and transfers mentd in the second pt of the sd schedule hto upon having such
 Release. Witnes-
 seth. release as is hinafter contd; NOW THIS INDRE WITNETH that in psuance of such agreemt, and in conson of the several paymts and transfers mentd in the second pt of the sd schedule having been made by the sd K. and L., at the request of the sd several pties hto of the first five pts, as they do resply hby acknowledge, They, the sd several pties hto of the first five pts (a), according to their several and respive rights and interests, do, and every of them doth hby release the sd K. and L., and also the sd X. and Y., and every of them, their, and every of their hrs, exs, ads, estes and effects, from all actions, proceedings, claims, and demands, in respect of the trust este and ppty comprd in or at any time subjt to the trusts of the sd indre of settlmt of, &c., or of any of the acts, matters, and things mentd or implied in the sd schedule hto, or otherwise in relation to the premes.

IN WITNESS, &c.

The schedule referred to in the above-written indre.

Schedule of accounts in two parts.

IX.

PREC. IX.

RELEASE by RESIDUARY LEGATEES to EXECUTORS and TRUSTEES of a WILL comprising REAL and PERSONAL Estate, EXCEPT as to CERTAIN TRUST FUNDS.

PARTIES, A., B., "and C., his wife," D., E., "and

(a) As to the trustees of the daughter's settlement joining in the release, see p. 391, note.

F., his wife," *residuary legatees and husbands of married women*, PREG. IX.
 1 (a); G. and H., *executors and trustees*, 2. *Recite Will giving* Recitals.
legacies and containing a general devise and bequest to G. and H. in trust for conversion, the proceeds to be applied in payment of funeral and testamentary expenses, debts, and legacies, and subject thereto in trust for such of the testator's children as should survive him; Direction that daughters' shares should be held on trusts for the benefit of themselves and their children, and appointment of G. and H. executors; Codicil bequeathing a legacy; Death of testator and probate;
 AND WHAS the sd A., C., D., and F., are the only children Children.
 of the sd testor who survived him, and they have all attained the age of twenty-one years; AND WHAS the sd testor Property.
 was at his decease entled to certain real and leasehd este situate at, &c.; AND WHAS the sd G. and H. have Adminis-
tration of
personal
estate.
 got in and converted all the psonal este of the sd testor which was not specifically bequeathed by his sd will, and have paid thereout all his funeral and testamentary expenses and debts, and all legacy duties (b) payable under his sd will and codicil, and have paid or provd for the pecuniary legacies bequeathed by his sd will and codicil, and the net residue of the sd psonal este amounts to £—; AND WHAS Sale of real
and lease-
hold
estate.
 the sd G. and H. have sold the whole of the real and leasehd este of the sd testor, and after paymt of the costs, charges, and expenses of, and incidental to, the sd sale, the net proceeds arising from such sale amounted to the sum of £—, making, with the sd sum of £—, the sum of £—; AND WHAS the sd G. and H. have paid one equal Division of
estate.
 fourth pt of the sd sum of £— to each of them the sd A. and D., as they do resply hby acknowledge, and have invested one other fourth pt of the same sum in the pchase of £— New £3 per Cent. Annuities in their own names, to be held upon the trusts in the sd will expd for the benefit of the sd C. and her children, and have invested the

(a) As to the married women, see p. 384, note.

(b) If the testator died since the 1st of June, 1881, there would be no legacy duty on the bequest to his children, see 44 Vict. c. 12, s. 41.

PREC. IX. remaining one-fourth pt of the sd sum in the pchase, in
 their own names, of £—— Consolidated 8 per Cent.
 Annuities, to be held upon the trusts in the sd will expd
 for the benefit of the sd F. and her children; AND WHAS
 the sd G. and H. have rendered to the sd several psons
 pties hto of the first pt accounts of the real and psonal
 este of the sd testor, and of the sale, conversion, and getting
 in thof resply, and of the application of the monies arising
 from such sale, conversion, and getting in, and have also
 duly paid or accounted to the sd several pties hto of the first
 pt for all rents and profits arising from the sd real and
 leasehd estes, from the death of the sd testor until the
 completion of the sd sale, and all income which has accrued
 from the sd psonal este, as the sd several pties hto of the
 first pt do resply hby declare, and being satisfied with such
 accounts, they have agrd to give to the sd G. and H. such
 rele as is hinafter contd: NOW THIS INDRE WITNETH
 that in psuance of the sd agreemt, and in conson of the
 premes, they, the sd pties hto of the first pt, do, and every
 of them doth, hby rele and for ever discharge the sd G. and
 H., and each of them, their, and each of their hrs, exs, and
 ads, from all actions, proceedings, accounts, claims, and
 demands, for, or in respect of, the real and residuary psonal
 este of the sd testor, or any pt thof resply, or the monies
 arising from the sale, conversion, and getting in of the same
 resply, or the rents, profits, dividends, interest, or income
 thof resply [or for or in respect of any sale, conversion,
 investmt, paymt, application, valuation, act, or thing made,
 done, or executed, or neglected, or omitted by the sd G.
 and H., or either of them, in the administration of the sd
 este, or the execution of the trusts of the sd will and codicil],
 or for, or in respect of, any other thing in anywise relating
 to the premes; PROVD ALWAYS that the rele hinbefore contd
 shall not extend to the sd respive sums of New £8 per Cent.
 Annuities and Consolidated £8 per Cent. Annuities retained
 by the sd trees to be held upon the trusts in the sd will
 mentd for the benefit of the sd C. and her children, and the

Accounts,
&c.

Wit-
nesseth.

Release.

Not to
extend to
property
retained by
trustees.

sd F. and her children resply as afsd, or the dividends or PREG. IX.
income thof resply.

IN WITNFSS, &c.

X.

DEED of RELEASE, CONFIRMATION, and INDEMNITY PREG. X.

*by the Parties INTERESTED under a WILL, in respect
of the TRUSTEES having RETAINED part of the REAL
ESTATE UNSOLD, and in respect of a SALE to a SON
of the TESTATOR at a VALUATION, and RELEASE by
the WIDOW of her LIFE INTEREST in the Purchase-
money to the Son.*

*PARTIES, A., widow, 1; B., C., D., and E. his wife,
F., and G. his wife, children, and husbands of married
daughters (a), 2; B., son, 3; L., M., and N., trustees, 4.
Recite Will containing residuary devise and bequest in trust Recitals.
for sale and conversion, and trust of proceeds for A. for life,
remainder to children at twenty-one, &c.; Death and probate;
State of family; Testator's title to estate; AND WHAS after That estate
has been
retained
unsold.
the death of the sd testor it was considered that an imme-
diate sale of the sd este was undesirable, and it was accord-
ingly arranged, with the approbation and consent of all the
sd pties hto of the first and second pts, that the same
should remain unsold, and should be cultivated and kept up
at the expense of the sd testor's este; AND WHAS it has been Agreement
for sale to
son.
lately agrd between the sd trees and the sd B., with the ap-
probation and consent of all the sd other pties hto of the
first and second pts, that the sd este should be sold to the
sd B. for the sum of £——, being the sum at which the same*

(a) As to the married women, see p. 384, note.

PREC. IX. remaining one-fourth pt of the sd sum in the pchase, in their own names, of £—— Consolidated 3 per Cent. Annuities, to be held upon the trusts in the sd will expd for the benefit of the sd F. and her children; **AND WHAS** the sd G. and H. have rendered to the sd several psons pties hto of the first pt accounts of the real and psonal este of the sd testor, and of the sale, conversion, and getting in thof resply, and of the application of the monies arising from such sale, conversion, and getting in, and have also duly paid or accounted to the sd several pties hto of the first pt for all rents and profits arising from the sd real and leasehd estes, from the death of the sd testor until the completion of the sd sale, and all income which has accrued from the sd psonal este, as the sd several pties hto of the first pt do resply hby declare, and being satisfied with such accounts, they have agrd to give to the sd G. and H. such rele as is hinafter contd: **NOW THIS INDRE WITNETH** that in psuance of the sd agreemt, and in conson of the premes, they, the sd pties hto of the first pt, do, and every of them doth, hby rele and for ever discharge the sd G. and H., and each of them, their, and each of their hrs, exs, and ads, from all actions, proceedings, accounts, claims, and demands, for, or in respect of, the real and residuary psonal este of the sd testor, or any pt thof resply, or the monies arising from the sale, conversion, and getting in of the same resply, or the rents, profits, dividends, interest, or income thof resply [or for or in respect of any sale, conversion, investmt, paymt, application, valuation, act, or thing done, or executed, or neglected, or omitted by the sd G. and H., or either of them, in the administration of the sd este, or the execution of the trusts of the sd will, or for, or in respect of, any other thing] touching or relating to the premes; **PROVD ALWAYS** that the sd release shall not extend to the sd resply of the sd F. and her children, Annuities and Consolidated 3 per Cent. Stock, by the sd trees, or by the sd trees, or by the sd trees, mentd for the

Accounts,
&c.

Wit-
nesseth.

Release.

Not to
extend to
property
retained by
trustees.

RELEASES.

sd F. and her children resply as asd in the discharge of ~~the~~ income thof resply.

IN WITNESS, &c.

X

DEED of RELEASE, CONFIRMATION, and INTEREST
by the Parties INTERESTED under a Will, in respect
of the TRUSTEES having RECEIVED part of the said
ESTATE UNSOLD, and in respect of a Valuation
of the TESTATOR of a Valuation, and Interest of
the WIDOW of her LIFE Interest in the said
money to the Son.

PARTIES, A., widow, 1; B., C., D., and E. his wife
F., and G. his wife, children, and husband of some
daughters (a), 2; B., son, 3; L. M., and N. son of
Recite Will containing residuary devise and interest in real estate
for sale and conversion, and trust of proceeds for the life of the
remainder to children at twenty-one years of age, and the said
State of family: Testator's Will, and the said parties under a
the death of the said testator, and the said parties under a payment
diate sale of the said estate, and the said parties against the
ingly arranged, with the said parties being INFANTS
sd parties into of the said parties may execute when
should remain
at the execution
later

PREC. XI.

by E. and G., unless they are entitlep
te.
and trustees to compromise, &c., see the
ing in an extended form 23 & 24 Vict. c.
(s. 71).
p. 466, note, a form of covenant that an infant shall

PENC. X. has been valued by X. and Y.; AND WHAS the sd sale is intended to be forthwith carried into effect by a proper conveyance; AND WHAS the sd A., at the request of the sd B., and in order to provide him with the necessary capital for carrying on the cultivation of the sd este and his other requiremts, has agrd to rele her life interest in the sd sum of £—— constituting the pchase-money of the sd este in mnner hinafter mentioned, to the intent that such sum may be forthwith paid or transferred by the sd trees to the sd B., in pt satisfon of his share in the sd residuary este, subjt to the deduction of the legacy duty payable in respect thof, and the costs of and incidental to these presents and the carrying out of the sd arrangenmt, which it has been agrd shall be paid thereout; AND WHAS the sd pties hto of the first and second pts have resply agrd to execute such confirmation and rele, and the same pties, other than the sd E. and G., have resply agrd to enter into such covenants of indemnity as are hinafter contd: NOW THIS INDRE WITNETH that, in conson of the premes, the sd pties hto of the first and second pts, according to their several estes and interests, do resply hby ratify and confirm the sd sale, or intd sale, of the sd este to the sd B., and do hby authorise and empower the sd trees to carry such sale into effect, and do resply hby rele and discharge the sd L., M., and N., and every of them, their and every of their, hrs, exs, and ads, from all claims, demands, actions, and proceedings, in respect of the sd este having been retained unsold as afsd, or any loss arising from such retention, or in respect of the sd sale of the sd este to the sd B.; AND EACH of them the sd pties hto of the first and second pts, other than the sd E. and G., doth hby covenant with the sd L., M., and N. resply, and their respive exs and ads, that they the sd covenanting pties resply and their respive hrs, exs, and ads, will at all times keep the sd L., M., and N., and every of them, and their and every of their hrs, exs, and ads, effectually indemnified against all actions, proceedings, claims, and demands on the pt of any pson or psons, and in parlar on

Agreement for release of life estate.

Agreement for release, &c., to trustees.

Witnesseth.

Release to trustees.

Covenant of indemnity.

the pt of the sd E. and G., or either of them, or any pson or psons claiming under them or either of them, and from all costs, damages, and expenses, for or in respect of the sd este having been retained unsold as afsd, or in respect of the sd sale thof to the sd B., or in relation to any of the matters afsd: AND THIS INDRE ALSO WITNETH that the sd A. doth hby rele and surrender to the sd B., his exs and ads, all the este and interest of the sd A. for her life in the sd sum of £—— arising from the sale of the sd este to the sd B., and the interest and income thof, to the intent that such sum shall forthwith, or as soon as circumstances will admit, be paid or transferred by the sd trees to the sd B., his exs or ads, in pt satisfon of his share in the sd residuary este, subjt to and after deduction and paymt thereout of the legacy duty payable in respect thof, and the costs hinbefore mentd.

PREC. X.

Further
witnesseth.
Release of
life in-
terest.

IN WITNESS, &c. (b).

XI.

RELEASE and INDEMNITY by beneficiaries under a WILL to the EXECUTORS in respect of a payment made by way of COMPROMISE of a claim against the Estate (c). SOME of the beneficiaries being INFANTS who are made PARTIES, that they may execute when of age (d).

PREC. XI.

(b) This deed must be acknowledged by E. and G., unless they are entitlep for their separate use. See p. 375, note.

(c) As to the power of executors and trustees to compromise, &c., see the Conv. Act, 1881, s. 37, re-enacting in an extended form 23 & 24 Vict. c. 145, s. 30, which is repealed (s. 71).

(d) See also in Vol. I., p. 466, note, a form of covenant that an infant shall convey when of age.

PART. II. *adult beneficiaries, 1; infant beneficiaries, 2; executors, 8. Recitals as to compromise; AND WHAS the sd terms were arranged and the sd paymt made with the approbation of the sd pties hto of the first pt, who were consulted in the course of the sd negotiations, and who entirely concurred in the expediency of carrying out the sd terms and recommended the adoption thof, and agrd in respect thof to execute such rele and covenant of indemnity as is hinafter contd; AND WHAS the names of the sd, infants, have been inserted as pties to these presents of the second pt, to the intent that they may, if they think fit, execute the same on attaining the age of twenty-one years resply, but the effect of the execution of these presents by the sd adult pties hto or any of them as binding each such respive pty shall not in any way be prejudiced by the non-execution of these presents by the sd infants or either of them or by any other pson herein named as a pty to these presents: NOW THIS INDRE WITNETH that in psuance of the sd agreemt, and in conson of the premes the sd several psons hinbefore named as pties of the first and second pts, do and each and every of them doth hby rele the sd pties hto of the third pt, and each of them, their and each of their, hrs, exs, and ads, estes and effects from all actions, suits, accounts, claims, and demands for or in respect of the sd arrangemt by way of compromise or the paymt of the sd sum of £—— as afsd, or in any mnner relating thto, or to the premes: AND THIS INDRE ALSO WITNETH that in psuance of the sd agreemt and in conson of the premes, each of them the sd several psons hinbefore named as pties hto of the first and second pts doth hby covenant with the sd pties hto of the third pt, and each of them, their and each of their exs and ads, that they the sd several covenanting pties or their respive hrs, exs, or ads, or some or one of them, will at all times hereafter keep indemnified the sd pties lito of the third pt, and each of them, their and each of their, hrs, exs, and ads, este and effects against all actions, suits, accounts, claims, and demands incurred or sustained by reason of the adoption by them the sd pties hto of the third*

pt of the sd arrangemt by way of compromise, or the paymt PREC. XI.
 of the sd sum of £—— as afsd, or in any mner relating thto, ———
 or to the premes, and against all damages, losses, costs, and
 expenses whatsoever, consequential upon or incidental to any
 such action, suit, account, claim, or demand.

IN WITNESS, &c.

XII.

RELEASE to ADMINISTRATOR of *Intestate*, the NEXT PREC. XII.
of KIN being the SON (and administrator) of the ———
Intestate, and a DAUGHTER whose SHARE is in
 SETTLEMENT.

PARTIES, A. and B., his wife, 1 ; C., D., and E., 2 ; F., 3 ;
 WHAS X., late of, &c., died on the —— day of —— intestate Recitals.
 and a widower, leaving the sd B. and F., his only children Death, &c.
 and next of kin ; AND WHAS letters of administration of the Adminis-
 psonal este and effects of the sd X., were on the —— day of tration.
 —— granted out of the —— District Registry of the Probate
 Division of the High Court of Justice to the sd F. ; AND
 WHAS the psonal este of the sd X. consisted of the several Particulars
 stocks, shares, and secs, set forth in the schedule hereunder of personal
 written, of a leasehd messuage, lands, and hereds, known as, estate.
 &c., and situate, &c., togr with the furniture and effects in
 and about the same, and of the monies and debts (amount-
 ing in the whole to £——) which have been received by the
 sd F., the parlars whof are set forth in the sd schedule ;
 AND WHAS the sd F. as such admor as afsd has sold the sum Sale of
 of £—— Stock, forming pt of the este of the sd X., for the stock.
 sum of £——, and has invested the sum of £——, pt thof,
 in the pchase of —— Debentures of £—— each in the ——
 Railway Co ; AND WHAS the sd F. has also sold the sd Sale of
 leasehold. leasehold.

PREC. XII. leasehd messuage and premes for the sum of £——, and a portion of the sd furniture and effects for the sum of £——, making, with the monies hinbefore mentd to have been received by him and not to have been re-invested, the sum of £——, being the full amount of money which has come to the hands of the sd F. as such admor as afsd, exclusive of income; AND WHAS the sd F. has received dividends, rents, and income in respect of the sd este to the amount of £—— in the whole making, with the sd last-mentd sum,

Income. the sum of £——; AND WHAS the sd F. has paid and discharged all the debts, funeral, and administration expenses of the sd X., and the rent payable in respect of the sd leasehd premes, and the administration and legacy (a) duties payable in respect of the psonal este of the sd X., and the expenses of the sale of the sd leasehd premes, which paymts amount in the whole to the sum of £——, leaving a cash balance of £—— in the hands of the sd F., as such admor as afsd; *Recite settlement on the marriage of A. and B., of which C., D., and E., are trustees, containing a provision for settlement*

Payments made. *of after-acquired property of B.*; AND WHAS the sd F., with the privy and consent of the sd A. and B., and also of the sd C., D., and E., has set apart such portions of the sd stocks, shares, and secs as are mentd in the —— column of the sd schedule hto as the share of the sd B., and the value of which amounted at the time of the appropriation thof to £——, and retained for his own benefit such portions thof as are mentd in the —— column of the sd schedule, the value of such last-mentd portion amounting at the period afsd to £——; AND WHAS the sd F. has divided the unsold portion of the sd furniture and effects between the sd B. and himself, the value of the portion appropriated to the sd B. being £——, and of the portion appropriated to the sd F. £——, according to the

Division of stocks, &c. valuation thof respby made by Mr. ——; AND WHAS the

Furniture, &c. stocks, shares, and secs appropriated in respect of the share

Transfer to trustees.

(a) See p. 401, note.

of the sd B. as afsd, have been transferred by the sd F. to the sd C., D., and E., as trees of the sd settlemt; AND PREC. XII.
Costs, &c. WHAS the costs of and incidental to these presents have been paid out of the afsd cash balance in the hands of the sd F., leaving the sum of £——, a moiety whof, amounting to £——, added to the value of the stocks, shares, and secs, and the furniture and effects appropriated in respect of the share of the sd B., constitutes the moiety of the sd B. of the este of the sd X.; AND WHAS the sd last-mentd sum of cash Cash bal-
ance. has been paid to the sd C., D., and E., as such trees as afsd; AND WHAS the accounts of the sd F., as such admor Accounts. as afsd, have been submitted as well to the sd A. and B. as to the sd C., D., and E., for examination, and have been approved of by them; AND WHAS for the greater satisfson of the sd F., the sd pties hto of the first and second pts have Agreement
for release. agrd to execute to him the release hinafter contd: NOW Wit-
nesseth. THIS INDRE WITNETH that in psuance of such agreemt, the sd pties hto of the first and second (b) pts, do and each and every of them doth hby release and dis- Release. charge the sd F., his hrs, exs, and ads, from all actions, proceedings, accounts, claims, and demands whasoever, for or on account of the este and effects of the sd X. deceased, or the administration thof, or the conversion, sale, applica- tion, investmt, valuation, apportionmt, appropriation, and distribution thof, or of the proceeds thof, or for or in respect of the dividends, rents, and income thof, or any other matter or thing relating to the premes.

IN WITNESS, &c.

The Schedule above referred to.

Schedule.

(b) As to the trustees of the daughter's settlement, joining in the release, see p. 391, note.

XIII.

RELEASE of a POWER to JOINTURE (a).

FORM XIII.

Recitals. *PARTIES, A., tenant for life and donee of power, 1; B., reversioner, 2.* **Settlement and disentailing deed.** *WHAS under or by virtue of an indre dated, &c., the settlement, and of an indre dated, &c., a disentailing deed, and of the events and matters recited mentd or implied in the sd last-mentd indre, the sd A. is tenant for life of certain manors, messuages, lands, and hereds, situate in the parishes of —, in the county of —, with remainder to the sd B. in fee simple, subjt to a power by the sd indre of settlemnt given or reserved to the sd A. by deed or will to charge the sd hereds, or any pt thof, with a rent-charge not exceeding £—— per annum in favour of any wife who may survive him, during her life, by way of jointure, and to limit or create the usual powers and remedies, and a term of years for securing the same; AND WHAS it has been agrd between the sd A. and B., that in conson of, &c., state consideration, the sd A. should release the sd power of jointuring in mner hereinafter appearing: NOW THIS INDRE WITNETH that in psuance of the sd agreemt, and in conson of, &c., he the sd A. doth hby absolutely release unto the sd B., his hrs and assigns, all that the sd power of jointuring by the sd indre of settlemnt given or reserved to the sd A. as afsd, to the intent that the same shall henceforth be absolutely extinguished and cease to be exerciseable.*

Agreement.**Witnesseth.****Release.**

IN WITNESS, &c.

(a) As to the release of powers, see Sug. Pow. 8th ed. 82, Farwell Pow 10, the Conv. Act, 1881, s. 52.

XIV.

RELEASE *by CREDITORS to DEBTOR under a Composition effected WITHOUT RECOURSE to the BANKRUPTCY Act, 1869 (a).* PREC. XIV.

THIS INDRE, &c., BETWEEN the several psons whose names and descriptions are contd in the schedule hto (hinafter called the creditors) of the one pt, and A., of, &c., of the other pt: **WHAS** the sd A. is indebted to each of the creditors in the sum written opposite to his or her name in the schedule hto; **AND WHAS** the creditors have agrd to accept a composition of — shillings in the pound in full discharge of their sd debts; **NOW THIS INDRE WIT-** Recitals.
NETH, and it is hby mutually agrd and decl'd as follows:— Wit-

1. **THE SD A.** shall, on or before the — day of — next, pay to each of the creditors who shall execute these presents before that day, a composition of — shillings in the pound on his or her sd debt, which they hby agree to accept in full satisfson and discharge of their sd respive debts; Composi-
And in case such composition shall be duly paid each of them, the creditors, doth hby release the sd A., his hrs, exs, tion and
and ads, este and effects from his or her debt, and deth agree that such release shall be binding and effectual, al- release.
though some of the creditors of the sd A. may not execute these presents, and although the creditors who shall not execute the same, or any of them, shall receive paymt in full.

2. **PROVD ALWAYS** that in case the sd A. shall commit an Proviso in
act of bankruptcy before the sd — day of —, in respect event of
of which he shall be adjudicated a bankrupt, or in case he bank-
ruptcy.

(a) If there is a dissentient minority of creditors whom it is necessary to bind, proceedings must of course be taken under the Act. For forms of composition and other deeds taking effect under the Act, see 5 Dav. Prec., Part 2, p. 521, *et seq.*

PREC. XIV. shall not on or before the sd — day of — pay to each of the creditors who shall execute these presents before that day, the sd composition of — shillings in the pound on his or her debt as hinbefore is provd, then these presents shall be void.

IN WITNESS, &c.

The schedule above referred to.

Name of Creditor.	Address, &c.	Debt.	Amount of composition.	Signature and seal of Creditor.	Witness to execution by Creditor.

XV.

PREC. XV.

MUTUAL RELEASE *by* THREE PERSONS.

PARTIES, A., 1; B., 2; C. 3. **WITNETH** that every one and every two of them, the sd A., B., and C., doth and do hby release the others, and each of the others of them, their and his hrs, exs, ads, and assigns, and their and his estes and effects, from all sums of money, accounts, contracts, agreements, covenants, bonds, actions, proceedings, claims, and demands whatsoever, which any one or any two of them, the sd A., B., and C., now hath or have, or at any time heretofore hath or have had against the others, or either of the others of them, for or by reason or in respect of any act, matter, cause, or thing whatsoever, up to the day of the date of these presents.

IN WITNESS, &c.

SEPARATION DEEDS.

SEPARATION DEED *between HUSBAND and WIFE* containing VARIOUS PROVISIONS (a).

PARTIES, A., husband, 1; B., wife, 2; C. and D., trustees, Recitals.

8. WHAS unhappy differences have arisen between the sd A. and B., by reason whof they have agrd [by mutual consent, but at the request of the sd A.] to live separate and apart from each other for the future, and to enter into the arrangemt hinafter contd; AND WHAS the sd A. has issue by the sd B. — children, that is to say, *state names and ages of the children*; [AND WHAS the sd B. is [or the sd A. and B. in her right are] entled to the real and leasehd hereds hinafter described, which, it has been agrd, shall be granted and assigned in mner hinafter expd] (b); AND WHAS the sd C. and D. have, at the request of the sd B., agrd to act as trees for the ppose of the arrangemt intd to be hby made, and also to enter into the covenants and obligations hinafter contd: NOW THIS INDRE WITNETH that in psuance of the sd agreemt, and for the consons herein appearing, the sd A. doth hby, so far as the agreemts and provons hinafter contd are, or ought to be performed or observed by him or his hrs, exs, or ads, covenant with the sd B., her

a) See 5 Dav. Prec., Part 2, p. 667, *et seq.* Pollock on Contracts, Macqueen on Husband and Wife, chap. 4. This Precedent contains various alternative provisions adapted to different cases.

(b) See *infra*, p. 415, note (b), and p. 416, note (c).

exs and ads (c), and also separately with the sd C. and D., their exs and ads, [and the sd B. doth hby, to the intent to charge and bind all the separate este and ppty which she is or may become entled to, or may have power so to charge or bind, so far as the agreemts and provons hinafter contd are, or ought to be performed or observed by her or her hrs, exs or ads, covenant with the sd A., his exs, and ads (c), and also separately with the sd C. and D., their exs and ads.] And the sd C. and D. do hby resply, so far as the agreemts and provons hinafter contd are, or ought to be performed or observed by the sd B., or the sd C. and D., or their resptive hrs, exs, or ads, or any of them, covenant with the sd A., his exs and ads, in mnner following, that is to say:—

Liberty to
wife to live
apart from
husband.

1. IT SHALL BE LAWFUL for the sd B., at all times hereafter, to live separate and apart from the sd A., and free from his marital control and authority, as if she were sole and unmarried, and to reside from time to time at such place [and to carry on such trade, business, or occupation], as she may think proper, without any interference whatever on the pt of the sd A.

Husband
and wife
not to
molest,
&c., each
other.

2. NEITHER OF THEM, the sd A. and B., shall molest the other of them [or any member or members of his or her family], or compel or endeavour to compel the other of them to cohabit or dwell with him or her by any legal proceedings for restitution of conjugal rights or otherwise howsoever (d).

Not to take
proceed-
ings for a

3. NEITHER OF THEM, the sd A. and B., shall take any proceedings against the other of them to obtain a divorce or

As to
covenants
by wife.

(c) Under the law prior to 1883, it was necessary that the covenants of the husband and wife for each other's benefit should be entered into with trustees, and the wife's covenants had no legal force except as binding her separate estate in equity, and except as to the covenant not to sue for a divorce, &c.; but since, under the Married Women's Property Act, 1882, s. 1, every married woman may now contract as a *feme sole*, and this appears to enable her to enter into contracts with her husband as well as third parties (see ss. 12 and 13), it seems proper that the husband and wife should each covenant with the other as well as with the trustees. As to the effect of the wife's contracts as binding her separate estate, see the late Act, s. 1, *ante*, p. 93, note.

(d) See *Hunt v. Hunt*, 31 Beav. 89; 4 D. F. & J. 221.

judicial separation in respect of any misconduct which has hitherto taken place, or is alleged to have taken place, on the part of the other of them. divorce, &c. (e).

4. THE sd A. shall, during the joint lives of himself and the sd B. [provid the sd B. shall remain chaste (f)], pay to her, the sd B., the sum of £—— per annum as her separate estate, but so that she shall not have power to anticipate the same (g), such annuity to be apportionable at the commencement and termination thereof according to law (a), but to be payable quarterly on the usual quarter-days, the first payment to be made on the —— day of —— next. Husband to pay annuity to trustees for wife.

[5. *Covenant by A. to pay £—— to trustees on demand, with interest in the meantime at —— per cent. per annum to be held in trust to invest and vary investments, and to pay income to B. during joint lives for separate use, without power of anticipation, and after death of A. or B. in trust for survivor absolutely; Proviso, that if, and so long as A. shall, during joint lives, punctually pay to trustees the interest on the £——, then the trustees shall not compel payment of the £——. See SETTLEMENTS PERSONAL.*] Husband to pay gross sum to trustees.

6. ALL THE wearing apparel and personal ornaments of the sd B., and all moveable personal property belonging to the sd A. now in her possession, shall belong to the sd B. as her separate estate independently of the sd A. Wearing apparel, &c., of wife to belong to her as her separate estate (b).

(e) See *Marshall v. Marshall*, 5 P. D. 19; *Thomas v. Everard*, 6 H. & N. 448.

(f) In the absence of such a provision, the husband would be liable to continue the annuity, notwithstanding the subsequent adultery of the wife, *Evans v. Carrington*, 2 D. F. & J. 481; *Charlesworth v. Holt*, L. R. 9 Ex. 38. See also *Gandy v. Gandy*, 7 P. D. 163, reversing the decision of the Court below. This has been held not to be a usual provision in a separation deed, *Hart v. Hart*, 18 Ch. D. 670. As to the effect of the covenant on the right to alimony or an allowance pending or after a suit for divorce, see *Powell v. Powell*, L. R. 3 P. & D. 55, 186; *Benyon v. Benyon*, 1 P. D. 447; *Morrall v. Morrall*, 6 P. D. 98; and as to proof in bankruptcy under such a covenant, see *In re Wood*, L. R. 9 Ch. Ap. 670; *Exp. Neal*, 14 Ch. D. 579.

(g) See the Married Women's Property Act, 1882, s. 19.

(a) See the Apportionment Act, 1870, 33 & 34 Vict. c. 35, s. 2.

(b) The provisions as regards the wife's property will depend on circumstances. If the parties were married after 1882, the wife is, by the Married as to wife's Women's Property Act, 1882, ss. 1 and 2, made a *feme sole* as to all her property. Provisions

Further
testatum :
conveyance
of freehold
and lease-
hold estates
of wife to
her as her
separate
estate (c).

[7. AND THIS INDRE ALSO WITNETH that in further psuance of the sd agreemt, and in conson of the premes, the sd B., with the concurrence of the sd A., doth hby grant, and the sd A. doth hby grant and confirm, unto the sd C. and D., and their hrs, *Parcels, Vol. I., p. 344; omitting general words and estate clause, see Vol. I., pp. 357, 359, notes*, To HOLD the same UNTO the sd C. and D. and their hrs, To THE USE of the sd B., her hrs and assigns, as her separate este, independently of the sd A.; *Add, if necessary, in a separate testatum, an assignment of wife's leaseholds and choses in action not reduced into possession to the trustees, habendum, to the sd C. and D., their exs, ads, and assigns*

property existing at the time of the marriage or afterwards acquired ; and, by ss. 1 and 5 of the Act, a woman married before 1883 is in the same position as to all property acquired by her after 1882. As to the wife's separate property, whether belonging to her as a *feme sole* under the Act, or settled to her separate use under the old law, no provision is required for her protection, except possibly, as to the latter, a clause divesting the husband of the legal estate in real or leasehold property, so as to enable her to dispose of the legal as well as beneficial interest without his concurrence (see p. 92, note). But it may be proper to add a proviso excluding the husband from taking any interest after his wife's death, in the event of her predeceasing him without having disposed of the property in her lifetime or by will ; since the separate use under the old law does not exclude the husband's marital right by survivorship, or as the wife's administrator, to her leaseholds and personalty, and to an estate by the curtesy in her freeholds so settled, see p. 453, note. As to whether the late Married Women's Property Act affects the husband's common law rights after the wife's death, see *infra*, p. 453, note. This should, of course, be provided for, if need be, by an express clause.

(c) See the last note. This clause is adapted to the case where the property is not the wife's separate estate, or was settled to her separate use under the old law in such form that the legal estate could not be conveyed without the husband's concurrence (see p. 92, note). The common law doctrine that a husband cannot convey property direct to his wife was removed as to freeholds and choses in action by the Conv. Act, 1881, s. 50 ; and the enactment in the Married Women's Property Act, 1882, s. 1, by which every married woman is enabled to acquire and hold property as a *feme sole*, may have the effect of abolishing the doctrine altogether ; but, as this is not clear, trustees should be interposed in the conveyance of the leaseholds in the text ; and in the case of the freeholds, as the wife is one of the conveying parties, the conveyance is made to the trustees as grantees to the use of the wife. It would generally be better to convey the freeholds or leaseholds by a separate deed, so as to avoid bringing the other provisions of the separation deed on to the title. See also as to the clauses in the text, *Pride v. Bubb*, L. R. 7 Ch. 64.

in trust for the sd B., her exs, ads, and assigns, as her separate este, independently of the sd A.]

8. ON THE death of the sd B. in the lifetime of the sd A., If wife die all her separate este, whether real or psonal, which she shall ^{first,} husband not have disposed of in her lifetime, or by will, shall (subjt to her debts and engagemts) go and belong to the psons or ^{to be excluded.} pson who would have become entled thto if the sd A. had died in the lifetime of the sd B.

9. IF THE SD B. shall die in the lifetime of the sd A., he shall permit her will to be proved, or administration to her psonal este and effects to be taken out by the pson or psons ^{Husband to allow wife's will to be proved (d).} who would have been entled to do so had the sd A. died in her lifetime.

10. THE SD B. shall have the sole custody and control ^{Custody of infant children.} of, *here name children*, and of their education and bringing up until they resply attain the age of — years (e), without any interference whatsoever on the pt of the sd A.

[11. IF AND SO OFTEN and so long as any child or children ^{Expense of maintenance of infant children (f).} of the sd A. and B. shall during the joint lives of the sd A. and B. be living with or under the control of the sd B., the sd A. shall pay to the sd trees or tree in trust for the sd B. the sum of £—— per annum in respect of each such child being under the age of — years, and the sum of £—— per annum in respect of each such child being over the age of — years and under the age of twenty-one years and unmarried, such respive yearly sums to be apportionable at the commencement and termination thof according to law, but to be payable quarterly on the usual quarter-days, and to be applied by the sd B. in or towards the maintenance and education or otherwise for the benefit of such children or child, but without liability to account so long as she shall maintain

(d) See *Allen v. Humphrys*, 8 P. D. 16.

(e) See 36 & 37 Vict. c. 12. Notwithstanding the paternal right, the Court will take the custody of the children away from a father who has been guilty of grave misconduct. *Swift v. Swift*, 34 Beav. 266, 4 D. J. & S. 710; *Hamilton v. Hector*, L. R. 13 Eq. 511.

(f) As to the liability of a married woman having separate property to maintain her children, see the Married Women's Property Act, 1882, s. 21.

and educate such children or child to the satisfson of the sd trees or tree ; The sd A. shall also pay the funeral expenses of any child who shall die while living with or under the control of the sd B..] [*or*, THE SD B. shall, out of her own monies, provide and pay for the maintenance and education of the children or child for the time being living with her or under her control by virtue of these presents,] [*or*, EACH OF THEM, the sd A. and B., shall, out of his or her own monies, provide and pay for the maintenance and education of any children or child during any period or periods while such children or child shall be living with him or her, or under his or her control.]

Access to
children.

12. THE SD A. and B. shall resply at all convenient and reasble times, to be settled in case of dispute by the sd trees or tree for the time being, have access to and communication with the children or child for the time being living with or under the control of the other of them [*or* at school as hinafter is mentd.]

Schools for
boys.

13. THE SD K., L., and M., *the boys*, shall, as and when they resply attain the age of — years, be placed at the expense of the sd A. at such schools in England as he, or at such schools elsewhere as he, with the consent in writing of the sd B., [*or*, as the sd trees or tree] shall from time to time determine ; such of them the sd K., L., and M., as shall for the time being be at school, shall pass the holidays at such places and in such mnner as the sd trees or tree shall from time to time direct, having regard to the reasble wishes of the sd A. and B.

Power to
trustees to
change
custody of
children.

14. IT SHALL BE LAWFUL for the sd trees or tree, if circes shall arise which in their or his opinion render it absolutely necessary for the welfare of the children or child for the time being living with or under the control of either of them the sd A. and B., to remove such children or child, and to place them, him, or her, with or under the control of the other of them the sd A. and B.

Trustees to
indemnify
husband

15. THE SD B., her hrs, exs, and ads, and also the sd C. and D., and their respive hrs, exs, or ads, shall at all times

hereafter keep indemnified the sd A., his hrs, exs, and ads, ^{against wife's debts (g).} from all debts and liabilities htofore or hereafter to be contracted or incurred by the sd B., and from all actions, proceedings, claims, and demands, costs, damages, and expenses whatsoever in respect of such debts and liabilities or any of them.

16. IN CASE the sd A. shall be obliged to pay any sum or ^{Proviso} sums of money for or on account of any debt or liability ^{that annuity, &c., shall in certain events cease to be payable.} htofore or hereafter contracted or incurred by the sd B., or in case the sd B. shall at any time take any proceedings against the sd A. for restitution of conjugal rights or otherwise for compelling him to cohabit with her, or shall at any time directly or indirectly molest the sd A. [or any member or members of his family], then and in any of such cases the sd annuity of £—— shall cease to be payable, [or, the sd sum of £——, secured by the covenant of the sd A., and the interest thof, shall cease to be payable, and if the same sum shall have been paid by the sd A. to the sd trees or tree, the same and the investmts and income thof shall thenceforth be held in trust for the sd A., his exs, ads, and assigns absolutely.]

[17. IN CASE the sd A. shall at any time or times hereafter be called upon to pay or discharge, and shall actually pay or discharge any debt or liability htofore or hereafter contracted or incurred by the sd B., then and in every such case it shall be lawful for the sd A. to deduct and retain out of the sd annuity of £—— [to deduct and retain, or be reimbursed out of the sd sum of £—— hinbefore covenanted to be paid by him, and the investmts and income thof,] the amount which he the sd A. shall have so paid in respect of such debt or liability, togr with all costs and expenses ^{Proviso that debts paid by husband may be deducted from annuity (g).}

(g) The provisions for the husband's indemnity should be retained although it has been determined that the wife has no power to pledge the husband's credit after a separation deed; *Eastland v. Burchell*, 3 Q. B. D. 432. As to the general law, see *Debenham v. Mellon*, 5 Q. B. D. 394. It is conceived that the law on this subject is not altered by the Married Women's Property Act, 1882; and if so this covenant would create a consideration for the covenants and provisions entered into on the part of the husband; but see *contra*, *Wolstenholme & Turner* on the Act, p. 7.

which he shall have paid or incurred on account thof, but so that this present provon shall not in anywise render the sd A. liable to the paymt of any of the debts of the sd B., or prejudice his rights or remedies under the covenant of indemnity of the sd C. and D. hinbefore contd.]

Covenant
for further
assurance.

18. EACH OF THEM, the sd A. and B., or their respive hrs, exs, or ads, shall at any time execute and do all such assurances and things as the other of them, his or her hrs, exs, ads, or assigns, or the sd trees or tree shall reasably require for the ppose of giving full effect to these presents and the covenants, agreemts, and provons herein contd.

Proviso
in case of
reconcilia-
tion or dis-
solution of
marriage.

19. PROVD ALWAYS, and it is hby agrd that if the sd A. and B. shall be reconciled, and return to cohabitation [or if their marriage shall be dissolved, or they shall be judicially separated (a), by reason of any misconduct of the sd B. [occurring after the date hereof]], then, and in such case, all the covenants and provons herein contd shall beccme void, but without prejudice to any [sale or other] act previously made or done hereunder, or any proceedings on the pt of any of the pties hto in respect of any then antecedent breach of any of the covenants or provons herein contd. [And the sd trees or tree shall hold any ppty then vested in them or him by virtue of these presents, subjt and without prejudice to any dispositions or engagemts thtofore made or entered into with respect to the same by the sd B., to such uses, and upon such trusts, as will most nearly correspond with the uses and trusts to which the same would then resply be subjt if these presents had not been executed.]

Provision
as to ap-
pointment
of new
trustees(b).

20. THE STATUTORY POWER of appointing new trees of these presents shall, as to trees to be appointed in the place of the sd C., or of any tree to be appointed in his place, be vested in the sd A., and as to trees to be appointed in the place of the sd D., or of any tree to be appointed in his place, shall be vested in the sd B.

IN WITNESS, &c.

(a) See p. 415, note (f).

(b) See the Conv. Act, 1881, s. 31, *infra*, SETTLEMENTS. As to separation deeds generally, see 2 Lead. Cas. Eq., note to *Stapillon v. Stapillon*.

SETTLEMENTS (PERSONAL.)(a)

RECITALS (b).

1. WHAS a marre is intd shortly to be solemnized between the sd, *intended husband and wife*. Intended marriage.

(a) The forms under this head include those for land settled as personally by means of a trust for sale. See Dav. Proc. vol. iii. ; Elph. Introd. Conv. 315 *et seq.* See also, in connection with settlements, "APPOINTMENTS," Vol. I. p. 74 *et seq.* As to the stamps on settlements, see the Stamp Act, 1870, Sched. "SETTLEMENT;" 3 Dav. Proc. 700.

The following is a short reference to the important recent legislation bearing on settlements of real and personal estate :—The Conv. Act, 1881, 44 & 45 Vict. c. 41, s. 7, enabling covenants for title to be implied ; s. 30, by which trust estates in freeholds or copyholds vested in a sole trustee devolve on his death on his personal representatives ; ss. 31—34, providing for the appointment of new trustees, and enabling trustees to retire without a fresh appointment ; s. 35, supplying the usual subsidiary provisions in the case of a power or trust for sale ; s. 36, supplying the trustees' receipt clause ; s. 37, giving trustees large powers of compounding debts and claims, settling accounts, &c. ; s. 38, providing for the survivorship of powers given to two or more trustees ; s. 39, enabling the Court to bind the interest of a married woman, notwithstanding a restraint on anticipation ; s. 41, extending the provisions of the Settled Estates Act, 1877, to freeholds and leaseholds vested absolutely in an infant ; s. 42, intended to obviate the necessity for inserting the usual minority clause by giving to the trustees powers of management and receipt and application of the rents in the case of an infant entitled in possession to land ; s. 43, supplying powers and provisions for maintenance and accumulation of surplus income during the minority of the person entitled in possession to any property real or personal ; s. 44, giving the usual remedies for the recovery of rent-charges ; s. 45, providing for the redemption of quit rents and other perpetual charges on land ; s. 50, enabling a husband to convey freeholds and choses in action to his wife and *vice versa* ; s. 51, enabling an estate in fee

Recent legislation affecting settlements.
The Conv. Act, 1881.

(b) See also the forms of recitals in "CONVEYANCES ON SALE," Vol. I. p. 317 *et seq.*

Title to
stocks, &c.,
in possession, and
agreement
for settle-
ment.

The Conv.
Act, 1882.

The
Settled
Land Act,
1882.

The
Married
Women's
Property
Act, 1882.

II. AND WHAS the sd A. is absolutely entled to the several stocks, funds, shares, and secs following, that is to say, &c.,

simple or in tail or tail male or female to be limited by those expressions without the word "heirs" ; s. 62, enabling easements, &c., to be limited by way of use ; s. 71, partially repealing 23 & 24 Vict. c. 145 ; and the 4th schedule giving a sample form of strict settlement of land (see s. 57) :—

The Conv. Act, 1882, 45 & 46 Vict. c. 39, s. 5, enabling separate sets of trustees to be appointed for different parts of the trust property on an appointment of new trustees ; and s. 6, as to the disclaimer of powers by trustees :—The Settled Land Act, 1882, 45 & 46 Vict. c. 38, ss. 3—20 and 31, conferring on tenants for life and other limited owners (as defined by ss. 2 and 58) under all settlements of land and hereditaments of any tenure corporeal or incorporeal (see s. 2), including settlements by way of trust for sale (s. 63), extensive powers of leasing, making grants in fee for building purposes, accepting surrenders of leases, sale, exchange, enfranchisement, partition, granting licences to copyholders, laying out land for building purposes, and raising money by mortgage, with full subsidiary powers ; ss. 21—30, providing for the re-investment of capital money arising under the Act (or liable under the "settlement" to be re-invested in land, s. 33) according to the direction of the tenant for life in various modes, including improvements (and as to money in Court, see s. 32) ; s. 35, providing for the cutting of timber in certain cases ; s. 37, enabling heirlooms to be sold under an order of the Court ; ss. 50—52, providing that the powers of the Act shall not be assigned or parted with by the tenant for life or excluded by the settlement ; s. 57, enabling the powers to be extended ; s. 56, keeping alive concurrent powers contained in the settlement, subject to the consent of the tenant for life to their exercise ; s. 59, extending the powers of the Act to the case of an infant absolutely entitled to land (see s. 60) ; and s. 64, repealing so much of 23 & 24 Vict. c. 145, as had not been repealed by the Conv. Act, 1881 :—And the Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, ss. 1, 2, 5, giving to every married woman the capacity of acquiring, holding, and disposing of property, and also of contracting, as a *feme sole*, and providing that the property of every married woman shall belong to her as a *feme sole*, except where the marriage and the acquisition of the property were both before 1883 ; ss. 6—9, providing specially as to investments in the name of married women, subject to a provision (s. 10) as to investments of the husband's money in fraud of his creditors ; s. 11, enabling a policy to be effected by a wife on her own or her husband's life for her separate use, or by a wife or husband on her or his own life for the benefit of the other of them or the children ; s. 12, giving married women remedies for the protection and security of their separate property (and see s. 17) ; ss. 13—15, regulating the liability of the wife and husband respectively in respect of the wife's ante-nuptial debts ; s. 18, making special provision for the case of a married woman who is a trustee (and see s. 24) ; s. 19, providing that the Act is not to affect the power to make settlements before or after marriage of the property of a married woman, or the power to impose a restriction against anticipation, subject to the rights of her ante-nuptial creditors, and to a provision avoiding settlements in fraud of her creditors ; ss. 20, 21,

or, "specified in the schedule hto," and upon the treaty for the sd intd marre it was agrd that the same should be transferred to the sd, *trustees*, in trust for the sd A., his exs and ads, until the sd intd marre, and afterwards upon the trusts and with and subjt to the powers and provons hinafter decld and contd concerning the same, *or, for brevity*, "upon the trusts hinafter expd."

III. AND WHAS under the will of X., deceased, dated, &c., and a codicil thto, dated, &c., and which were proved in the — court [registry] &c., on the — day of —, the sd A., [as one of the children of K., deceased,] is absolutely entled in possion to one equal — pt or share of the residuary psonal este [and of the net proceeds of the sale and conversion of the real este] of the sd testor, which, [so far as at present realized and ascertained,] consists of or is represented by the several stocks, funds, shares, secs, and ppty specified in the schedule hto (c), and now standing in the names of or otherwise vested in or under the legal control of L. and M. as trees of the sd will, *or*, "the parlars and amount of which este have not yet been ascertained"; and the sd A. may [in the event of the death of any of the other children of the sd K., being a son or sons under the age of 21 years, or being a daughter or daughters under that age and unmarried, *or*, "in certain events,"] become entled to a further share or shares of such residuary este and premes; and upon the treaty for the sd intd marre it was agrd that the share or shares of such residuary este and premes to which the sd A. is or may become entled as afsd should be assigned to the sd, *trustees*, in mnner hinafter appearing, upon the trusts and with and subjt to the powers and provons hinafter decld and contd concerning the same.

Title in possession to share of residuary estate and to a possible further share, and agreement for settlement.

making a married woman having separate estate liable for the maintenance of her husband and children. Most of these enactments will be adverted to more particularly, as to their effect on settlements, *infra*.

(c) The particulars of the trust funds should be given, so far as ascertained, for the purpose of the ad valorem stamp duty.

Title to re-
versionary
share in
trust funds
under
settlement
or will.

IV. AND WHAS under an indre, dated, &c., and expd to be made, &c., [the will of K., deceased, dated, &c., and a codicil thto, dated, &c., which will and codicil were proved on the — day of — in the — Court [Registry] &c.,] [and a deed poll of appointmt, dated, &c., under the hand and seal of —,] the sd A. is [will upon the sd intd marre become] absolutely entled to the sum of £—— Consolided £3 per cent. Annuities (*d*), pt of a larger sum of like Annuities subj to the trusts of the sd settlmt, [will and codicil,] *or*, “to one equal — pt or share of the trust funds, secs, and ppty [which now are or by means of the accruer of any other ppty under the proven in the sd indre contd for the settlmt of after-acquired ppty of the sd X., shall at any time become] subj to the trusts of the sd indre, [will and codicil,]” *or*, “to one equal — pt or share of all and singular the trust funds, secs, and ppty, subj to the trusts of the sd indre, [will and codicil,] which shall remain after satisfying a previous appointmt in favour of L., a daughter of the sd X., made by a deed poll, dated, &c., subj to the life interest of the sd X. therein [subj to certain prior interests therein during the lives and life of the sd X. and Y., and the survor of them].

Title to
portion
money
charged on
settled
estates.

V. AND WHAS under or by virtue of an indre of settlmt, dated, &c., and made, &c. (being a settlmt of the estes of the sd K., situate in the county of —, executed in conson of, and shortly before the marre of K. and L., his late wife), and by virtue of the trusts of a term of — years by the same indre limited in the sd estes for raising portions for the daughters and younger sons of the sd K. and L., [and by virtue of a deed poll of appointmt under the hand and seal of the sd K., dated, &c., in psuance of a power contd in the sd indre of settlmt] the sd B. is, [will if her intd marre shall take place within six calendar months from the date of the sd deed poll of appointmt become] absolutely entled to

(*d*) As to the manner of describing the public funds, see Vol. I. p. 75, note (*d*).

the sum of £—— to be raiseable out of the sd estes, and payable to her on the decease of the sd K., with interest from his decease at the rate of 4 per cent. per annum, until payment, or in his lifetime with his consent.

VI. AND WHAS the ppty subj to the trusts of the sd indre of settlemt, [will and codicil,] or, "representing the residuary este of the sd testor, [so far as the same has at present been realised and ascertained]," (e) consists of, *state investments, as,* "the sum of £—— debenture stock of the ——— Railway Co, the sum of £—— invested on mtge of a freehd este at ———, in the county of ———, &c.," or, "consists of the stocks, funds, shares, and secs specified in the schedule hto," which are resply standing in the names of or vested in or under the legal control of L. and M., the trees of the sd indre of settlemt, [will and codicil].

Particulars of trust property.

VII. AND WHAS the ppty now subj to the trusts of the sd indre of settlemt consists of the stocks, funds, and secs specified in the schedule hto, and of the freehd, copyhd, and leasehd hereds mentd in the sd schedule, which have been pchased under a power contd in the sd indre, and are now vested in and held by L. and M., the trees of the sd indre, upon the trusts therein contd for the sale of the sd hereds, and for the application of the net sale monies, and of the net rents and profits of the sd hereds, or of the unsold pt thof for the time being, upon the trusts thby decld concerning the monies applied in the pchase thof, and the income of such monies.

The same, where partly consisting of land purchased and held as personalty.

VIII. AND WHAS upon the treaty for the sd intd marre it was agrd that all the share or shares of the sd A., whether in possession, reversion, or expectancy, and whether vested or contingent, of or in, &c., should be assigned to the sd, *trustees*, in mner hinafter appearing, upon the trusts and with and subj to the powers and provons hinafter decld and contd concerning the same.

Agreement for settlement of reversionary or other share of property derived under settlement or will.

IX. AND WHAS pursuant to an agreemt made upon the

Transfer

(e) See p. 423, note.

of stock,
shares, de-
bentures,
or other
like pro-
perty.

treaty for the sd intd marre, the sum of £—— Consolidated, or, "Reduced," or, "New," £8 per cent. — Annuities [—— shares of £—— each in, or, "—— Debentures for £—— each of," the —— Co,] [or, the several stocks, shares, debentures, and secs, the parlars whof are specified in the schedule hto,] belonging to the sd A. have been, [or, are intd forthwith to be] transferred by him, [or by his direc-tion] into the names of the sd, *trustees*, to the intent that the same shall be held in trust, &c, *as in form II.*

Transfer of
bonds to
bearer or
other
property
passing by
delivery.

X. AND WHAS psuant to an agreemt made upon the treaty for the sd intd marre, —— Bonds of the —— Gouernmt for £—— each, [for sums amounting in the aggregate to £——,] bearing interest at the rate of £—— per cent. per annum, [the bonds and secs the parlars whof are specified in the schedule hto,] belonging to the sd A. have been, [or, are intd forthwith to be] delivered by him, [or by his direction], to the sd, *trustees*, to the intent that the same shall be held in trust, &c., *as in form II.*

Transfer
of stocks,
&c., pur-
suant to
recited
agreement.

XI. AND WHAS the transfer agrd to be made as afsd of the sd stocks, funds, shares, and secs to the sd, *trustees*, has been, [or, is intd forthwith to be] duly made and per-fected.

Statement
of value of
stocks for
stamp
duty (f).

XII. AND WHAS the sd stocks, funds, shares, and secs specified in the schedule hto, and intd to be hby settled, do not togr exceed in value the sum of £——, according to the average market price thof on the day of the date hereof.

Title to and
agreement
for settle-
ment of
policy or
policies on
husband's
life.

XIII. AND WHAS the sd A., *intended husband*, is absolutely entled to a policy of assurance effected on his life and in his own name for the sum of £—— with the —— Assurance Society, dated, &c., numbered, &c., and under the annual premium of £——, [and to another policy effected, &c.,] or, "to the several policies of assurance on his life hinafter mentd" (g), and upon the treaty for the sd intd marre, it

(f) See the Stamp Act, 1870, s. 13.

(g) It is generally more convenient to give the particulars of the policies in the operative part.

was agrd that the same policy [respive policies] should be assigned to the sd, *trustees, &c., as in form III.*

XIV. AND WHAS psuant to an agreemt in that behalf made upon the treaty for the sd intd marre, the sd A., *intended husband*, has effected an assurance on his life for the sum of £——, in the —— Office, by a policy No. ——, Series ——, in the names of the sd, *trustees*, under the annual premium of £—— [and another assurance, &c.,] to the intent that the same policy [respive policies] shall be held in trust, &c., *as in form II.*

The same where effected in names of trustees.

XV. AND WHAS the sd A. is absolutely entled to a sum of £—— and interest secured on mtge of certain freehld hereds, situate at, &c., [belonging to X.,] by an indre, &c., and psuant to an agreemt made upon the treaty for the sd intd marre, the sd A. has, by an indre bearing even date with and executed before these presents, and expd to be made, &c., transferred the sd mtge debt and interest, and the secs for the same, to the sd, *trustees*, in trust for the sd A., his exs and ads, until the sd intd marre, and afterwards upon such trusts and with and subjt to such powers and provons as should be decld concerning the same by an indre of even date thwith therein referred to, meaning these presents.

Title to mortgage and transfer to trustees (a).

XVI. AND WHAS psuant to an agreemt in that behalf made upon the treaty for the sd intd marre, by an indre bearing even date with and executed before these presents, and expd to be made, &c., the sd A., *intended husband*, with the approbation of the sd B., *intended wife*, has assured certain freehld hereds situate in the parish of —— and county of ——, and therein partarly described, to the use of the sd A. and his hrs until the sd intd marre, and afterwards to the use of the sd, *trustees*, their hrs and assigns, upon the trusts and with and subjt to the powers and provons thinafter decld and contd concerning the same; [And by the same

Conveyance in trust for sale of freeholds to trustees. Variations for leaseholds and copyholds.

(a) The transfer is made by a separate deed in order to keep the trust off the title.

indre the sd A., with the like approbation, has assigned certain leasehd hereds, situate, &c., to the sd, *trustees*, their exs, ads, and assigns, for the residue of the respive terms granted by the therein recited several indres of lease under which the same are severally holden, subjt to the respive rents and covenants on the pt of the lessees and condons by and in such indres of lease resply reserved and contd, Upon trust for the sd A., his exs and ads, until the sd intd marre, and afterwards, upon the trusts, &c., *as above*; And by the same indre the sd A., with the like approbation, has covenanted with the sd, *trustees*, their hrs and assigns, to surrender certain copyhd hereds, situate, &c., and held of the manors of — and —, to the use of the sd, *trustees*, their hrs and assigns, according to the customs of the several manors of which the same are resply holden, Upon trust for the sd A. and his hrs until the sd marre, and afterwards, upon the trusts, &c., *as above*:] And it is thby decld that the sd, *trustees*, their hrs, [exs, ads,] and assigns shall, at the request or at the discretion therein mentd, sell the sd freehd, [leasehd, and copyhd] premes, or any of them, in mner therein mentd, and shall stand possessed of the net monies to arise from any such sale, and the net rents and profits of the sd premes, or of the unsold pt thof for the time being, after paymt of the expenses therein mentd, [upon the trusts therein expd for the benefit of the sd A. and B. resply during their respive lives, and after the decease of the survor of the sd A. and B. (b)] upon such trusts and with and subjt to such powers and provons as should be decld and contd concerning the same resply by and in an indre of even date thwith therein referred to, meaning these presents.

Agreement
as to settle-
ment of
wife's
after-
acquired
property.

XVII. AND WHAS it has been also agrd that such provon shall be made for the settlemt of the other present or future acquired ppty of the sd, *intended wife*, except as hinafter mentd, as is hinafter contd.

(b) As to the frame of a deed of this nature, see *infra*.

XVIII. AND WHAS upon the treaty for the sd intd marre, it was further agrd that the sd — should enter into such covenant as is hinafter contd for the paymt to the sd, *trustees*, of the annual sum, *or*, "principal sum and interest," hinafter mentd, to be held and applied upon the trusts and in manner hinafter expd.

As to covenant to be entered into for payment of annual or principal sum.

XIX. AND WHAS it has been also agrd that these presents shall contain the several other covenants, clauses, and provons hinafter contd.

General agreement.

CLAUSES.

I. NOW THIS INDRE WITNETH that in psuance of the sd agreemt in this behalf, and in conson of the sd intd marre, the sd, *husband*, [*wife*] as settlor (*a*), with the appro-

Assignment by husband or wife of personal

(*a*) The provisions of the Conv. Act, 1881, s. 7 (1 A., B.) enabling the ordinary qualified covenants for title and further assurance in a conveyance or assignment of freeholds, leaseholds, or personalty, or a covenant to surrender copyholds, to be implied in a conveyance on sale (as to which see Vol. I. p. 365, *et seq.*, note, and addenda thereto), are applicable also to settlements on marriage, or for other valuable consideration. As to what is a settlement for value, see 3 Dav. Prec., part 1, 673 *et seq.* In such a settlement the full covenants may therefore be implied by making the settlor or each settlor convey "as beneficial owner," so that the covenants of each will extend to the property or interest expressed to be conveyed by him. In a post-nuptial settlement for valuable consideration, if the wife is a conveying party "as beneficial owner," her covenants would be contracts binding her as a *feme sole* under the Married Women's Property Act, 1882, s. 1, to the extent of her separate estate which she is not restrained from anticipating, as to the acts of herself and her ancestors, &c., and if the husband also conveys in like manner, his covenants would extend to the acts of himself and his wife and persons under whom they claim.

As to implying covenants for title in a settlement under the Conv. Act, 1881

Inasmuch, however, as it would often not be according to the intention that the settlor should enter into the full covenants for title, the Act contains a provision (s. 7 (1 E.)) applicable to conveyances and assignments, &c. "by way of settlement," enabling the settlor, by conveying or assigning "as settlor," to imply only a covenant for further assurance, as to the property or only.

As to implying covenant for further assurance only.

estate to trustees.

bation of the sd, *wife*, [*husband*], doth hby assign unto the sd, *trustees*, their *exs*, *ads*, and assigns, *ALL*, &c., *parcels* (b) :

interest expressed to be settled by him, restricted to the acts of the settlor himself and persons "deriving title under him by deed or act or operation of law in his lifetime subsequent to the settlement or by testamentary disposition or devolution in law on his death."

As to implying covenants in a voluntary settlement.

The last-mentioned enactment is not confined to settlements for valuable consideration, and the restricted covenant for further assurance may therefore be implied in a voluntary settlement; but should it be desired (which is not likely) that the settlor should in such a case enter into the full covenants for title, the covenants must be inserted at length, or the statutory covenants may be incorporated by an express clause.

As to covenant against incumbrances by trustee, &c.

Where a trustee or mortgagee joins as a conveying party in a settlement, the ordinary covenant against incumbrances may of course be implied under the Act (s. 7 (1 F.)), by his conveying "as trustee" or "as mortgagee," see Vol. I. p. 366, note.

The statutory covenants may, it is conceived, be generally relied upon, except in the case of real estate abroad. For the full forms of express covenants for title or against incumbrances, which are adapted with little if any alteration to settlements, see Vol. I. "CONVEYANCES ON SALE," pp. 365, *et seq.*, 379, *et seq.*

In the form in the text, if it is desired to imply the full covenants for title, the words "as beneficial owner" will be substituted for "as settlor."

As to making the husband join in the wife's covenants.

Where the wife or intended wife is the settlor, and it is desired that the husband should also covenant, the following variation may be used :—"The sd, *wife*, 'as settlor,' or, 'as beneficial owner,' doth hby assign [*grant*], and the sd, *husband*, 'as settlor,' or, 'as beneficial owner,' doth hby assign [*grant*] and confirm unto, &c." It has been the practice to make the husband join in the covenants for title or further assurance of the wife's property, and it may in general be proper that he should still do so where the full covenants for title are entered into; but there would be little utility in his joining in the statutory covenant for further assurance, having regard to its restricted form and the effect of the Married Women's Property Act, 1882.

Forms of parcels. Personal estate. Vested reversion.

(b) The following forms of parcels for personal estate are adapted to the more ordinary cases. For a vested reversionary interest under a settlement, "ALL THAT the sd moiety, or, 'equal — pt or share' [or other the pt or share] to which he the sd A. is [or will upon the sd intd marre, or in any other event, become] entled under or by virtue of the sd indre of settlemt of, &c., [and the sd deed poll of appointmt of, &c.,] of or in the trust funds and ppty comprd in or [which are now or may at any time become] subj't to the trusts of the sd indre of settlemt,

To HOLD the same [subj^t to the interest of the sd, *prior tenants for life*, therein] UNTO the sd, *trustees*, their exs,

Variation where the assignment is by a separate deed.

expectant on the decease of the sd X. and Y., and subj^t to their respive life interests therein, as hinbefore mentd."

For a vested share and possible additions by accruer, &c., of a legacy,

"ALL THAT equal — pt or share [or other the pt or share]

The same, with possible accretions.

to which the sd A. is entled under or by virtue of the sd will and codicil of the sd L., and all other, if any, the pt or share, or pts or shares, to which he may hereafter become entled by accruer, survivorship, or otherwise, in the event of the death of any of the other children of the sd X. and Y., under the age of twenty-one years, or in any other event, of or in the sd legacy or sum of £—— bequeathed by the sd will in trust as hinbefore recited, or the investmts or ppty now or from time to time representing the same, and of or in the accumulations thof, expectant on the decease of the sd X. and Y., and subj^t to their respive life interests therein."

For a share in possession of a residuary estate under a will, "ALL

THAT the sd equal — pt or share [or other the pt or share]

Share of residue under will.

of the sd A., under the sd will and codicils of the sd L., of or in the residuary psonal este, and the proceeds of the sale of the real and leasehd este of the sd testor, and the investmts and ppty now or hereafter representing the same respily."

For a contingent interest, "ALL the pt or share, pts or shares, or the whole, as the case may be, to which the sd A. will, in the event of his attaining the age of —

Contingent interest.

years, or, 'in the event of his surviving the sd X.,' or in any other event, become entled of or in, &c., and the accumulations thof under, &c.," or, "ALL and every the pt or share, pts or shares, and interests whatsoever, to which the sd A. is now in anywise entled, in possion, reversion, expectancy, contingency, or otherwise, under or by virtue of, &c., or by any means whatsoever, of or in, &c., and of or in all existing and future accumulations thof, subj^t to the prior interests in or affecting the same."

For a policy or policies of assurance, "ALL THAT the sd policy [ALL

Life policy or policies.

ads, and assigns, IN TRUST for the sd, *husband*, his, [*wife*, her] exs and ads, until the sd intd marre, and afterwards

THOSE the sd respive policies] of assurance on the life of the sd A. in the sd — Society [and — Society] to which he the sd A. is entled, as hinbefore recited, and the sd sum of £—— [respive sums of £—— and £——] assured thby, and all bonuses and additions thto [respily],” or, *if not recited*, “ALL THAT policy of assurance for the sum of £—— on the life of him the sd A., effected in the — Society, dated, &c., and numbered, &c., and under the annual premium of £——, [and also all that other policy, &c.,] and all monies assured by or to become payable under the same policy [respive policies],” or, “ALL THOSE — several policies of assurance the parlars whof are specified in the schedule hereunder written, and all monies, &c.” For a mortgage debt, “ALL THAT the sd principal sum of £—— [forming pt of the sd sum of £——] owing on the secy of the sd indre of mtge of, &c., and the interest now due, and henceforth to become due, for the same, and the full benefit of all secs for the same principal sum and interest.” For furniture, &c., “ALL AND SINGULAR the furniture, plate, pictures, prints, [diamonds, jewels, trinkets, psonal ornaments,] and other articles and effects belonging to the sd A., which are partarly described in the schedule hereunder written,” or, “ALL the furniture, plate, and other articles and effects of household or domestic use or ornamt which are now in or about the messuage or dwelling-house in which he the sd A. now resides, situate and being, &c., or the out-buildings, gardens, or grounds thof.”

• Mortgage
debt.

Furniture,
&c.

As to “all the estate” clause. The “all the estate” clause is useless and should be omitted, having regard to the Conv. Act, 1881, s. 63, which implies it unless a contrary intention appears; see Vol. I. p. 359, note. Of course the description in the parcels of the interest to be settled should be sufficiently general (as in the above forms) to take in any possible interest of the settlor whether existing or hereinafter accruing, if such be the intention; and the “all the estate” clause, whether expressed or implied by the Act, would probably not avail to pass any interest belonging to the settlor which is by mistake omitted in the parcels.

[upon the trusts and with and subjt to the powers and provons hinafter decl'd and contd concerning the same] [upon such trusts, and with and subjt to such powers and provons as are or shall be decl'd and contd concerning the same resply, in and by an indre intd to bear even date with, and to be executed immediately after these presents, and to be made between, *parties*, [the same pties as these presents]].

II. AND [EACH OF THEM] THE SD, *husband*, [and *wife*], doth hby covenant with the sd, *trustees*, their exs, ads, and assigns, that he [they], the sd, *husband*, [and *wife*], and all psons claiming under him [her], will at any time hereafter, at the request of the sd, *trustees*, or the [survors or] survivor of them or the exs or ads of such survivor or other trees or tree for the time being of these presents (hinafter called the sd trees or tree (e)), or of any pson for the time being interested in the premes, and at the cost of the trust este, execute and do every such assurance and thing for the further or more effectually assuring the sd premes hby assigned, or any pt thof (f) to the sd trees or tree, and enabling them or him to obtain possion of and receive the same, as shall be reasonably required.

Express covenant for further assurance of personality by husband.
Variation where wife joins (d).

III. THE SD [(g) *trustees*, or the survivors or survivor of them, or other the trees or tree for the time being of these pre-

Trust for investment.

(d) See p. 430, note.

(e) This abbreviated expression is used throughout the remainder of these forms of clauses, on the assumption that it will have been interpreted as in the text in the first place where it occurs. The still shorter expression "the trustees" might be used, being interpreted to include a sole trustee. If preferred, the interpretation clause may be placed at the end of the deed. See *infra*, p. 493, and note.

(f) Where stocks, &c., though vested in possession and immediately transferable, may not be actually transferred till after the marriage, add here, "and also, if the transfer of any of the sd stocks, funds, shares, or secs, which have been agrd to be transferred to the sd trees as afsd, shall not have been made or perfected before the sd intd marre, for making and perfecting such transfer thof."

(g) The words in this bracket will be omitted if the phrase, "the sd trustees or trustee," has already been interpreted, as above.

sents hinafter called the sd] trees or tree shall either allow the sd sum of £—— Annuities or any pt thof [the sd stocks, funds, shares, secs, and premes which have been transferred to the sd trees as hinbefore mentd, *or*, “the sd sums of £—— and £—— invested on mtge as afsd,” *or if the property is reversionary*, “the sd shares and interests hinbefore assigned, as and when the same resply shall fall into possion and be received by the sd trees or tree,” or any of them, or any pt or pts thof resply] to remain in the actual state of investmt thof, so long as the sd trees or tree may think fit, or shall at any time or times, with the consent in writing of the sd, *husband*, and, *wife*, or the survor of them during their, his, or her lifetime, and after the death of such survor, at the discretion of the sd trees or tree, sell [call in, or convert into money (a)], the same, or any of them, or any pt thof resply, and (b) invest the monies produced thby [or any other capital monies which may be received by the sd trees or tree in respect of the sd trust premes (a)] in the names or name [or under the legal control (c)] of the sd trees or tree in or upon, &c., *form IV., v., or VI.*

(a) Insert the words in these two brackets, if there are mortgage-debts, debentures, &c., which may be called in or paid off, or reversionary interests. The following words may be substituted for the second bracket, if it is desired to provide more specifically for debentures or reversions:—“and also all capital monies which may be received upon the paymt or discharge at maturity of all or any of the debentures or secs afsd,” *or*, “and also all capital monies which may be received in respect of the sd shares and interests hinbefore assigned, or any pt thof, when the same shall fall into possion.”

(b) Where the settlement includes also a sum of money in possession, say here, instead of the words in the text, “and shall, with the like consent, or at the like discretion, invest the monies produced thby, and the sd sum of £—— [when the same shall have been received by them or him] in the names,” &c., as in the text.

(c) If securities passing by delivery are *not* authorised, omit the words here bracketed.

IV. ANY OF the public stocks, or funds, or Government securities of the United Kingdom or India, or any securities, the interest on which is, or shall be, guaranteed by Parliament, or in stock of the Bank of England or Ireland, or of the Metropolitan Board of Works, or upon freehold, copyhold leasehold, or chattel real securities in England, Wales, or Ireland (d) [but not in Ireland], or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, or in any other investment in which trust funds, or cash under the control of the Chancery Division, may for the time being be authorised by law to be invested, but not in any other mode of investment, and may, with such consent or at such discretion as aforesaid, vary or transpose such investments into or for others of any nature hitherto authorised.

V. ANY OF the public stocks, or funds, or Government securities

(d) The above are the statutory securities, as authorised by 22 & 23 Vict. c. 35, s. 32, 23 & 24 Vict. c. 35, ss. 10, 11, G. O. 1st Feb., 1861, 34 & 35 Vict. c. 47, s. 13 (see also, as to India Stock, 30 & 31 Vict. c. 132, s. 1, 32 & 33 Vict. c. 106, s. 16, 36 & 37 Vict. c. 32, s. 16, 37 & 38 Vict. c. 3, s. 17, 42 & 43 Vict. c. 60, s. 18, and see 3 Dav. Prec. part 1, pp. 19, *et seq.*, 710, 711, notes, Morgan's Chancery Acts, 5th ed. p. 260, Elph. Introd. Conv. 333); exclusive of heritable bonds in Scotland (which, however, are now free from the objection of being real estate, being by 31 & 32 Vict. c. 101, s. 117, made personal estate except in certain cases); but with the addition of leasehold securities (which are less open to objection than formerly, by reason of the protection against forfeiture for breach of covenant afforded by the Conv. Act, 1881, s. 14), and with the addition also of railway debentures, which are authorised by the Settled Land Act, 1882, in the case of capital money arising under the Act (s. 21). See also, as to the guaranteed securities of the East Indian Railway Company, 42 & 43 Vict. c. ccvi. s. 37. As to charges under the Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), see that Act, s. 60. As to debentures issued under the Mortgage Debenture Act, 1865 (28 & 29 Vict. c. 78), see that Act, s. 40, and the Mortgage Debenture Amendment Act, 1870 (33 & 34 Vict. c. 20, ss. 15, 16). As to debentures of local authorities, see the Local Loans Act, 1875 (38 & 39 Vict. c. 83, s. 27); and as to debenture stock, see 34 Vict. c. 27. The municipal securities of some of the large towns are also authorised by their special Acts as investments for trustees in certain cases.

of the United Kingdom or India, or any Colony or Dependency of the United Kingdom, or any secs, the interest on which is, or shall be, guaranteed by Parliamt, or in stock of the Bank of England or Ireland, or of the Metropolitan Board of Works, or upon freehd, copyhd, leasehd, or chattel real secs in England, Wales, or Ireland [but not in Ireland], or in or upon the debentures or debenture stock of any Railway Co in the United Kingdom or India, or the shares or stock of any such Railway Co, a fixed or minimum rate of dividend on which is guaranteed by the same or any other co or the Governmt of India, or secured by means of a fixed rental payable by any other co (e), [or upon charges created under the Improvemt of Land Act, 1864, or any mtges thof, or debentures issued under the Mtge Debenture Act, 1865], or in or upon the bonds, debentures, or secs, or issued by any public, municipal, or local body or authority in the United Kingdom [or any Colony or Dependency thof], or on the secy of rates or tolls made or levied by any such body or authority, and may with such consent, &c., *as in last form.*

Invest-
ments.
Extensive
range.

VI. ANY of the public stocks, or funds, or Governmt secs of the United Kingdom or India, or any Colony or Dependency of the United Kingdom, or any Foreign Governmt or State, or in stock of the Bank of England or Ireland, or of the Metropolitan Board of Works, or in or upon freehd, copyhd, leasehd, or chattel real (f) secs in England, Wales,

(e) If thought proper, add here, "or in or upon the debentures, debenture stock, or secs, or the guaranteed or preference stock or shares of any co in the United Kingdom, or any colony or dependency thof, which shall have paid dividends of not less than three per cent. per annum on their ordinary capital for at least three years prior to the time of investmt."

(f) Add, if desired, "with or without chattel personal," which will authorise a mortgage of, *e.g.*, a factory comprising machinery, plant, stock-in-trade, &c. But in the present state of the law as to bills of sale, such an investment by trustees could scarcely, except under special circumstances, be proper.

Scotland, or Ireland, or on the secy of any interest for a life or lives, or determinable on a life or lives in real or psonal ppty togr with a policy or policies of assurance on such life or lives, or on the secy of any real or immoveable (g) ppty in India, or in any Colony or Dependency of the United Kingdom, or in any Foreign Country [or upon charges created under the Improvemt of Land Act, 1864, or any mtges thof, or debentures issued under the Mtge Debenture Act, 1865,] or in or upon the bonds, debentures, debenture stock, mtges, or secs, or the guaranteed preference or ordinary stock or shares of any co, or public, municipal, or local body or authority in the United Kingdom or India, or any Colony or Dependency of the United Kingdom, or any Foreign Country, or on the secy of rates or tolls made or levied by any such body or authority as afsd, and may with such consent, &c., *as in form IV.*

VII. AND ANY such investmt on mtge may be subjct to any prior charges or incumbrances or may be made in conjunction with any other pson or psons by way of contributory mtge (a) to be taken in the joint names of the contributories to the loan, or any of them, or in the names of any trees for such contributories, or otherwise, as may be deemed expedient.

Power to
lend on
second
mortgage
or contributory
mortgage.

VIII. AND IT is hby agrd that it shall be lawful for the sd trees or tree to deposit any deeds, secs, or instrumts [including secs to bearer] held by them or him as such trees or tree with any bankers or any firm or co for safe custody [or rect of dividends] and to pay out of the income of the trust este any sum payable for such deposit and custody.

Power to
deposit
deeds, &c.,
for safe
custody,
&c.

IX. PROVD ALWAYS that the powers of investmt hinfefore contd shall not extend to or include secs to bearer or passing by mere delivery.

Prohibition
of securi-
ties to
bearer.

(g) Add, if desired, "with or without moveable," which will authorise a mortgage of an estate with the stock on it, as is common in the Colonies.

(a) As to loans by trustees on contributory mortgages, see 3 Dav. Prec., part 1, p. 40, Elph. Introd. Conv., 338.

Power to
lend part
of trust
funds to
husb and.

X. PROVID ALWAYS, and it is hereby agreed that it shall be lawful for the said trees or tree, [and it shall be obligatory on them or him, upon the requirement in writing of the said, *husband*, and, *wife*, during their joint lives, or of the said, *husband*, after the death of the said, *wife*], to advance from time to time any sum or sums of money not exceeding in the whole at any one time the sum of £—— out of any part of the said trust premises (which the said trees or tree are hereby authorised to sell, call in, or convert into money for that purpose), by way of loan to the said, *husband*, for such period, at such rate of interest, not being less than five per cent. per annum, and upon such terms as he may require, so that the repayment of every or any sum so advanced with the interest thereon be secured by the bond or covenant of the said, *husband*, either with or without any other security, and to allow the monies so advanced to remain on loan as aforesaid during so long as the said, *husband*, may require [but so that the said trees or tree may, at the request in writing of the said, *wife*, during her life, and after her death, with the unanimous concurrence of all the trees for the time being, if more than one, call in and compel payment of the same], and so that the said trees or tree shall not under any circumstances be liable for the loss of any monies so advanced or the interest thereon: And the said trees or tree shall stand possessed of the sum or sums, the payment whereof is intended to be secured as last aforesaid, and the investments thereof, and the income thereof respectively, upon the same trusts, and with and subject to the same powers and provisions as the sum or sums so advanced, and the investments representing the same, and the income thereof respectively, would have been subject to or held if the same had not been so advanced.

First life
interest to
wife with-

XI. AND SHALL pay the income of the said ——, and the trust premises representing the same (b), to the said, *wife*,

(b) If property is brought into settlement on the part of both husband and wife, it may be convenient to use the expression “the fortune of the said, *wife* [*husband*],” or some similar short expression in subsequent parts of the deed, and if so to insert here the words, “which are hereinafter

during her life, but so that during the sd intd coverture she shall not have power to anticipate the same (d). out anticipation (c).

sometimes referred to as the fortune of the sd, wife, [husband]."

(c) By the Married Women's Property Act, 1882 (see p. 92, note), s. 2, a woman married after the commencement of the Act is entitled to hold and dispose of all her existing and future property as her separate property, as if she were a *feme sole*; and by s. 5, a woman married before the Act is in the same position as to all property, her title to which accrues (whether in possession or not) after the Act. Every interest, therefore, which the wife takes, whether in possession or remainder, under a future settlement, whether antenuptial or post nuptial, will *ipso facto* and without any express words to that effect, be her separate estate, independently of her husband; and unless restrained from anticipation she may dispose of it by deed, or other appropriate instrument, in her lifetime, or by will, as if she were unmarried. Wife's separate estate under Married Women's Property Act, 1882.

But by s. 19 the Act is not to affect any settlement or agreement for a saving settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or to interfere with any restriction against anticipation attached or to be attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, or other instrument; but this is subject to a provision for the protection of her creditors, as to which see *infra*, note to Precedent I. Saving clause as to settlements and restraint on anticipation.

Prior to the Act it was the practice to settle any interest coming to the wife in possession during the coverture to her separate use without power of anticipation, but any interest which she might take in remainder or reversion after the husband's death, such as a life interest or the ultimate reversion in default of issue of the marriage, was not usually so settled. So far as personal estate was concerned this was immaterial, as such an interest, being a reversionary *chose in action*, could not be disposed of at common law, and if it arose under the wife's own marriage settlement was excepted from the Act 20 & 21 Vict. c. 57, enabling a married woman to dispose of such an interest by deed acknowledged with the concurrence of the husband; but an interest in real estate, such as a jointure rent-charge, might have been disposed of by the wife with the concurrence of the husband by deed acknowledged. Old practice as to restraining anticipation.

Under the new law it will be important to remember that any interest taken by the wife under the settlement, whether in real or personal estate, and whether in possession or not, may be disposed of by her as a *feme sole*, unless she is expressly restrained from anticipation, and that it is necessary that such a restraint should be imposed (as it clearly may be) whether the interest is capable of coming into possession during the coverture or not, in all cases in which it is desired to protect the wife against marital influence. Effect of late Act.

By the Conv. Act, 1881, s. 39, the Court is empowered to bind the interest of a married woman notwithstanding a restraint on anticipation, where it appears to be for her benefit.

Words expressing that the wife's interests are to be her separate estate need

(d) See note (f), p. 440.

The same
during
joint lives.

XII. AND SHALL during the joint lives of the sd, *husband*, and, *wife*, pay the income of the sd —, and the trust premes representing the same (e), to the sd, *wife*, but so that she shall not have power to anticipate the same (f).

First life
interest to
husband.

XIII. AND SHALL pay the income of the sd —, and the trust premes representing the same (e), to the sd, *husband*, and his assigns during his life.

Second life
interest to
husband.

XIV. AND AFTER the death of the sd, *wife*, shall pay the income of the sd trust premes to the sd, *husband*, if surviving, and his assigns during his life.

Second life
interest to
wife with-
out antici-
pation.

XV. AND AFTER the death of the sd, *husband*, shall pay the income of the sd trust premes to the sd, *wife*, if surviving, and her assigns during her life, but so that during the sd intd coverture she shall not have power to dispose of or charge such reversionary life interest by anticipation.

Life inter-
est to
survivor.

XVI. AND AFTER the death of such one of them, the sd, *husband*, and, *wife*, as shall first die, shall pay the income of the sd trust premes to the survivor of them, and his or her assigns, during his or her life, but so that the sd, *wife*, shall not during her sd intd coverture have power to dispose of or charge such reversionary life interest by anticipation.

As to the
expression
"separate
use."

not now be inserted, and if inserted will be merely declaratory of the law; and the insertion of the old form declaring that her receipts shall be discharges is also of course unnecessary except where she is an infant (see note (f), *infra*). The expression "as her separate estate," or, "property" (which is generally used in the late Act) will in future be more appropriate than the expression "for her separate use," the latter being more strictly applicable to an interest existing, like the old separate estate, in equity only.

As to mode
of restrain-
ing antici-
pation.

The late Act does not make any alteration necessary in the form for creating the restraint on anticipation; but where the wife takes several interests under the settlement, and the restraint is to be annexed to every interest, it may be convenient to effect this by one clause, instead of repeating it in each case.

(e) See note (b) p. 438.

(f) If the intended wife be an infant, add here, "and her rect as well during her minority as afterwards shall be an effectual discharge for the same." As to the efficacy of a power to an infant to give receipts, see 4 Dav. Proc. 73, note.

XVII. AND SHALL, during the joint lives of the sd, *husband*, and, *wife*, out of the income of the sd —, and the trust premes representing the same, pay the yearly sum of £— to the sd, *wife*, to commence from the sd intd marriage, and to be considered as accruing from day to day (g), but to be payable on the — day of —, &c., *specify days*, or, “on the usual quarter days,” and the first paymt thof to be made on such of the sd days as shall happen next after the sd intd marre, and so that she shall not have power to anticipate the same, and shall during such joint lives pay the residue of the sd income to the sd, *husband*, and his assigns.

XVIII. AND SHALL pay the income of the sd —, and the trust premes representing the same (b), to the sd, *husband*, during his life [or until he shall become bankrupt, or shall assign or charge, or affect to assign or charge, the sd income or some pt thof,] or until some [other] event shall happen whby the sd income, or any pt thof, if belonging absolutely to him, would become vested in or payable to some other pson or psons (c).

(g) These words are inserted to make the annuity apportionable at the commencement and termination, which, however, it would be under the Apportionment Act, 1870, without them.

(a) As to limitations and trusts determinable on alienation or bankruptcy, see 3 Dav. Prec. p. 108 *et seq.*; Elph. Introd. Conv., 352; *Re Macleay*, L. R. 20 Eq. 186. It must be remembered that a man cannot settle his own property so as to take an interest determinable or defeasible on his *bankruptcy*; *Higginbotham v. Holme*, 19 Ves. 87; 3 Dav. Proc. 134; (and see *Wilson v. Greenwood*, 1 Swan. 471; *Whitmore v. Mason*, 2 J. & H. 204; *Ex pt. Mackay*, L. R. 8 Ch. Ap. 643; *Ex pt. Jay*, 14 Ch. D. 19, decided on instruments of other kinds): but he can take an interest in his own property determinable on *alienation*, *Brook v. Pearson*, 5 Jur., N. S. 781; *Knight v. Browne*, 7 Jur. N. S. 894, 30 L. J. Ch. 649: and he can be one of the objects of a discretionary trust, such as that in clause xx., of property settled by himself where the trust is not preceded by a determinable life interest; *Holmes v. Penney*, 3 K. & J. 90; and he can take an interest determinable on *bankruptcy* as well as *alienation* in property settled by his wife or any other person, *Lockyer v. Savage*, 2 Stra. 947; *Ex pt. Hinton*, 14 Ves. 598; *Kearsley v. Woodcock*, 3 Hare, 185; *Ex pt. Eyton*, 7 Ch. D. 145.

(b) See p. 438, note (b).

(c) If brevity is desired the words bracketed may be omitted. It may sometimes be desired that the husband should not be prevented from re-

Life interest in remainder to husband determinable on bankruptcy, &c.

XIX. AND AFTER the death of the sd, *wife*, shall, if the sd, *husband*, shall survive her, [and shall not be or have been a bankrupt, and shall not have assigned or charged, or affected to assign or charge the income of the sd trust premes or any pt thof] and if no [other] event shall have happened whby the same income, or any pt thof, would, if belonging absolutely to him, have become vested in or payable to some other pson or psons, pay the sd income to the sd, *husband*, during his life, or until, &c., *as in last form (d)*.

Discretionary trust for application of income on husband's bankruptcy, &c., for the benefit of him and his family (e).

XX. AND SHALL, after the [death of the sd, *wife*, and the failure or] determination during the life of the sd, *husband*, of the trust hinbefore decl'd of the sd income in his favour, from time to time during the remainder of his life, or during such shorter period or periods, either continuous or discontinuous, as the sd trees or tree shall in their or his absolute discretion think fit, pay all or any pt of the sd income to or apply the same for the maintenance and psonal support or benefit of all or any one or more, to the exclusion of the other or others, of the following psons, namely, the sd, *husband*, and his wife, if any, and his children or remoter issue for the time being in existence, whether by his now intd or any after-taken wife, and whether minors or

linquishing or charging his life interest in favour of a child, for which purpose the following proviso may be added :—

“PROVD ALWAYS that nothing herein contd shall prevent the sd, *husband*, from assigning or charging the sd income or any pt thof during his life or any less period with the consent in writing of the sd trees or tree in favour of any child of the sd intd marre who shall have attained the age of twenty-one years, or shall have been married before or shall marry within six calendar months after the date of such assignmt or charge.”

(d) See note (c), last page.

(e) As to trusts of this nature, having for their object the securing to the husband the personal enjoyment of the income notwithstanding bankruptcy, &c., see 3 Dav. Prec., p. 125 *et seq.*; Elph. Introd. Conv. p. 353; above, p. 441, note (a).

adults, and the other psons or pson for the time being entled to or interested, whether absolutely, contingently, or otherwise, in the sd trust premes, or any of them, under the trusts herein contd to take effect after the decease of the sd, *husband*, in such proportions and mner as the sd trees or tree shall in their or his absolute and uncontrolled discretion from time to time think proper, and subjt to the discretionary power lastly hinbefore contd, shall, during such remainder of the life of the sd, *husband*, hold the sd income or so much thof as shall not be applied under such discretionary power, Upon the trusts and for the pposes upon and for which the sd income would for the time being be held if the sd, *husband*, were then dead.

XXI. AND IN the event of the failure or determination during the life of the sd, *husband*, of the trust lastly hinbefore decl'd in his favour shall, during the remainder of his life, pay or apply all or any pt of the sd income unto or for the psonal support or benefit of the sd, *husband*, and his wife and issue (if any) for the time being in existence, and the psons or pson for the time being interested in the sd trust premes under the ulterior trusts hinafter decl'd, or any of such respive objects of the present discretionary trust to the exclusion of the others or other of them, in such shares and mner as the sd trees or tree shall from time to time in their or his absolute discretion think proper, and subject to such discretionary trust or power shall hold the sd income upon the trusts upon which the same would for the time being be held if the sd, *husband*, were then dead.

XXII. AND AFTER the [death of the sd, *wife*, and the failure or] determination during the life of the sd, *husband*, of the trust hinbefore decl'd of the sd income in his favour, shall during the remainder of his life hold the sd income upon the trusts and for the pposes upon and for which the same would for the time being be held if he were then dead.

The same,
short form.

Trust of
income
after bank-
ruptcy,
&c., of
husband
during his
life, where
there is no
discretion-
ary trust
for his
benefit (f).

(f) If the husband is *not* to take a protected life interest as provided by form XX. (which, however, would usually be according to the intention) this

Proviso
charging
husband's
life interest
with main-
tenance of
wife and
children
(g).

XXIII. PROVID ALWAYS, and it is hereby agreed that the life interest of the sd, *husband*, in the sd trust premises shall be subj't to and charged with the obligation of providing out of the income thereof a suitable residence and maintenance for the sd, *wife* (a), and such of the children of the sd intd marriage as shall for the time being be under the age of twenty-one years and unmarried, in priority, unless the sd trees or tree shall otherwise expressly determine, to any other fund applicable for that purpose, but without liability to account so long as the sd, *husband*, shall duly provide such residence and maintenance [and shall also be subj't to and charged with the obligation of making such yearly or other periodical allowance (if any) as the sd trees or tree shall in their or his uncontrolled discretion from time to time in writing direct or appoint for the maintenance and support of such of the children of the sd intd marriage as shall have attained the age of twenty-one years or be married, and shall, in the opinion of the sd trees or tree, require so to be maintained, but so that it shall not be obligatory upon the sd trees or tree to give any such direction as last aforesaid, and that no adult or married child of the sd intd marriage shall in the absence of any such direction have any claim for maintenance out of the income of the sd trust premises, and so also that in case the sd, *husband*, shall assign or rele his life interest in the whole or any pt of the income of the sd trust premises to any child or children of the sd intd marriage, such

clause should in general be inserted in preference to the trusts for the children being accelerated, which would involve an alteration in the common forms of those trusts; whereas the clause in the text by filling up the gap caused by the forfeiture of the husband's life interest avoids the necessity for any such alteration.

(g) This form is intended for a case in which the fund is settled by the husband himself, and it is desired to protect his life interest against creditors, which could not in this case be effected in the mode provided by forms XVIII., XIX., and XX., see p. 441, note (a); and as to the clause in the text, see *Carr v. Living*, 28 Beav. 644, 33 Beav. 474; *Elph. Introd. Conv.* 355.

(a) If the husband takes the second life interest, the provision for the wife will of course be omitted.

child or children shall hold the income so assigned as aforesaid discharged from the provisions hereinbefore contained for providing a suitable residence for and maintaining the said, *wife*, and infant children, and of making an allowance for any adult or married children.]

XXIV. PROVIDED ALWAYS, and it is hereby agreed that it shall be lawful for the said trustees or trustee so long as they or he shall deem it expedient so to do, to pay or remit the annual income hereby settled in trust for the said, *wife*, to such banker or other agent as she shall appoint, or to authorize such banker or agent to receive the same for the purposes of remittance or payment in such manner as she, the said, *wife*, shall direct; and every payment and remittance so made by the said trustees or trustee, pursuant to such direction or authority, shall be as effectual as against the said, *wife*, as if the same had been made into her own hands and upon her receipt, but this provision shall not restrict the said trustees or trustee from requiring from time to time as the said income shall accrue due a special direction from the said, *wife*, respecting the application thereof, or otherwise paying the same into her own hands, if they or he shall deem it advisable so to do.

XXV. IN TRUST for all or such one or more exclusively of the others or other (c) of the children [or remoter issue] (d) of the said intended marriage [such remoter issue to be born and take vested interests within twenty-one years from the death of the survivor of the said, *husband*, and, *wife* (e)] at such age, or

(b) This clause may properly be inserted where the wife is restrained from anticipation.

(c) The words expressly authorising an exclusive appointment are usually inserted, although they are not now essential. See 37 & 38 Vict. c. 37, doing away with the necessity which previously existed (notwithstanding the Act, 1 Wm. IV., c. 46), of appointing a nominal sum to, or leaving it unappointed for the excluded objects, where the power was non-exclusive.

(d) It is so generally desirable that the power should extend to grandchildren, so as to enable the parents to provide directly (instead of through the medium of the trust in default of appointment) for the family of a deceased child, or to settle the share of a child on him or her for life with remainder (as far as the rule against perpetuities will permit) to his or her issue, that the extension of the power in this manner may usually be assumed to be proper without special instructions; see 3 Dav. Prec. 144.

(e) The words in this bracket, restricting the power within the rules as to

Power to trustees to pay income to wife's bankers (b).

Power of appointment among children.

As to exclusive powers of appointment.

As to extending power to grandchildren.

Variations where power extends to remoter issue.

time, or respive ages or times, if more than one in such shares, and with such executory and other trusts for their respive benefit, and such provons for their respive advancemt (either after the death of the survor of the sd, *husband*, and, *wife*, or during the lives of them, or the survor of them, with their, his, or her, consent in writing (*f*), and maintenance and education, at the discretion of the sd trees or tree, or of any other pson or psons, as the sd, *husband*, and, *wife*, shall by any deed or deeds revocable or irrevocable jointly appoint: AND IN DEFAULT of, and subjt to any such appointmt, then as the survor of them, the sd, *husband*, and, *wife*, shall in like mner, or by will or codicil appoint.

The same, short form.

XXVI. IN TRUST for all or any of the children [or remoter issue] of the sd intd marre, in such shares and mner in all respects as the sd, *husband*, and *wife*, shall, &c., *as in last form*.

Proviso to be added to power of appointment where husband's interest is determinable (*g*).

XXVII. PROVD ALWAYS, and it is hby decl'd, that in the event of the sd, *husband*, surviving the sd, *wife*, and the failure or determination in his lifetime of the trust hinbefore decl'd in his favour, the power [respive powers] hinbefore given to him [alone or jointly with the sd, *wife*] of making appointmts in favour of the issue of the sd intended marre shall not be exerciseable by him after [*or*, shall continue to be exerciseable by him notwithstanding] such failure or determination.

perpetuity, are not necessary, as the power, whether so expressed or not, must be exercised with due regard to those rules; Elph. Introd. Conv. 356; but some such words are commonly inserted, and will often be useful by way of reminder of the rule when the power is exercised.

As to advancement and maintenance powers in the case of appointed shares.

(*f*) The powers of advancement and maintenance in these forms are intended to apply only to shares taken in default of appointment (according to what is considered the more correct practice), and not to appointed shares. The full form of power of appointment should, therefore, authorise the insertion of such clauses in an appointment to infants (especially where the power extends to grandchildren); and so as to enable an advancement to be made during the lifetime of the tenants for life, to prevent difficulty if the wife is restrained from anticipation, see 3 Dav., p. 160. As to the statutory maintenance clause, see *infra*, p. 449, note.

(*g*) When form XX., XXI., or XXII. is not inserted, but the trusts for the children are to be accelerated, the continuance of the husband's power of appointment may be inconvenient; otherwise it might remain exerciseable. In either case it is better to express the intention, see 3 Dav. Proc., p. 799.

XXVIII. AND IN DEFAULT of and subj^t to any appo^tmt^t ^{Usual} under the power [respive powers] hinbefore contd, in trust ^{trust for} for all or any the children or child of the sd intd marre, ^{children} who, being a son or sons, shall attain the age of twenty-one ^{in default} years, or being a daughter or daughters, shall attain that age ^{of appoint-} or marry [with the consent of his or their parents or parent ^{ment.} or guardians or guardian (*h*)], and if more than one, in equal shares.

XXIX. IN TRUST for all, or such one or more exclusively ^{Trust for} of the others or other of the children of the sd intd marre, ^{children,} other than and except (*a*) the first or only son, or any other ^{excluding} son or sons, who before his or their resply attaining the ^{child taking} age of twenty-one years, shall become [indefeasibly (*b*)] ^{estate.} entled, or any daughter or daughters, who before her or their resply attaining that age, or marrying, shall become indefeasibly entled to the first este in tail [male or in tail], either in possion or remainder under an indre, dated, &c., or, "the will, dated, &c., and proved, &c., of X.," (*c*) at such age, &c., *as in form XXV.* : AND IN DEFAULT of, and subj^t to any such appointmt in trust for all or any the children or child of the sd intd marre, other than and except as afsd (*d*), who being a son, &c., *as in form XXVIII.* : And if there shall be no child (other than and except as afsd), who being a son shall attain the age of twenty-one years,

(*h*) Under a trust in this form a daughter marrying under age without consent would, if she attains twenty-one, become entitled; for a form of trust excluding a daughter so marrying, see WILLS.

(*a*) When a child succeeding to a peerage or baronetcy is to be excluded say, "other than and except any son or sons who before his or their attaining the age of twenty-one years, shall inherit or become heir apparent to the earldom of — [the baronetcy now vested in —]."

(*b*) Where the eldest son of the intended marriage will not necessarily be the first tenant in tail, this word should be inserted.

(*c*) For a Scotch entail say, "entled as heir in entail in possion or as next heir substitute to the — este."

(*d*) The usual power of appointment extending to *all* the children is sometimes inserted; in that case, say, "other than and except the first or only son," &c., as above.

or being a daughter shall attain that age or marry, then in trust for such one or more of the sd excepted class of children as being a son or sons, shall attain, &c., *as in form XXVIII.*

Hotchpot
clause (e).

XXX. PROVID ALWAYS, that no child, who [or whose issue] shall take any pt of the sd trust premes under any appointmt by virtue of the power [either of the powers] hinbefore contd, shall in default of appointmt to the contrary be entled to any share of the unappointed pt thof, without bringing the share or shares appointed to him or her [or to his or her issue] into hotchpot, and accounting for the same accordingly.

Advance-
ment
clause (f).

XXXI. PROVID ALWAYS, and it is hby agrd that it shall be lawful for the sd trees or tree, at any time or times after the death of the sd, *husband*, and, *wife*, or in their, his, or her lifetime, with their, his, or her consent in writing, to raise any pt or pts not exceeding in the whole one half of the then expectant, or presumptive, or vested share of any child of the sd intd marre in the sd trust premes under the trusts hinbefore contd, and to pay or apply the same for his or her advancemt, or otherwise for his or her benefit, in such mner as the sd trees or tree shall think fit (g).

(e) If there is a second fund or after-acquired property of the wife the trusts of which are declared separately, and it is intended that the hotchpot clause shall apply to both or all the funds as if they were one, say :

Variation
in hotchpot
clause
where two
funds are
settled.

“ PROVID ALWAYS that no child who [or whose issue] shall take any pt of any of the trust funds or ppty hby settled or agrd to be settled under any appointmt by virtue of any power in these presents contd shall in default of appointmt to the contrary be entled to any share of the unappointed pt, if any, of any of the trust funds or ppty hby settled or agrd to be settled without, &c.”

(f) As to the advancement clause, see 3 Dav. Prec., p. 171 ; and as to extending the clause to appointed shares, see p. 446, note (f), and *infra*, p. 496, note (c).

(g) If the trust property may consist of land, add, “ and if necessary or convenient the same may be raised by the sd trees or tree by mtge of any hereds for the time being subjt to the trusts of these presents, and no mtgee shall be concerned to enquire as to the propriety of raising the same or as to the amount which ought to be raised.”

xxxii. AND FOR the ppose of giving effect to the provisions as to hotchpot and advancemt hinbefore contd, the ppty for the time being subj to the trusts of these presents whether real or personal, or any pt or pts thof, shall as far as may be necessary be valued in such mner and at such respive times as the sd trees or tree shall consider just and proper, and such valuation shall be conclusive.

Addition
to hotchpot
and ad-
vancement
clauses
providing
for valua-
tion of
land, &c.

xxxiii. AND IT IS HBY AGRD that the sd trees or tree shall, after the death of the sd, *husband*, and, *wife*, apply

Mainte-
nance
clause (a).

(a) The maintenance power in Lord Cranworth's Act, 23 & 24 Vict. c. 145, Power of s. 26, has been repealed by the Conv. Act, 1881, s. 71, and re-enacted in a better form by s. 43, which provides (sub-s. 1) that "Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether absolutely or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education or not;" and by sub-s. 2 the surplus income is to be accumulated and invested in securities authorised by the settlement or by law (as to which, see p. 435, note), "for the benefit of the person who ultimately becomes entitled to the property from which the same arise," with power to apply the accumulations for maintenance, &c., in subsequent years. But the clause will not apply where a contrary intention is expressed or indicated (sub-s. 3).

in the
Conv. Act,
1881.

The statutory power applies to all property real or personal vested in trustees (see the definition of "property" in s. 2); and whether the infant is entitled to the corpus of the property, or to a life interest only; and whether he is entitled absolutely, or contingently on his attaining 21, or any previous event; but not where the vesting is postponed to a later age (which, however, it could not be under a marriage settlement as being too remote). But it seems that the clause does not apply where the interest of the infant is defeasible, i.e., is given absolutely in the first instance subject to a gift over, e.g., on his dying under 21; *In re Buckley*, 22 Ch. D. 583, decided under the repealed enactment, but apparently equally applicable to the Act of 1881. The wording of the late Act excludes the application of *In re George*, 5 Ch. D. 837, decided under the repealed Act. The effect of the clause is that the income is applicable for maintenance, whether it belongs to the infant, or will belong to him on his attaining a vested interest, or not (unless a contrary intention is expressed or implied in the instrument creating the trust); and the law as to the right to the accumulations of surplus income is also in

As to the
application
of the Act.

the whole, or such pt as they or he in their or his discretion shall think fit of the income (b) of the share in the

Maintenance powers in the case of land.

some cases altered. As to the right to the intermediate income in the case of contingent and defeasible gifts to infants, and to classes, see Theobald on Wills, 2nd ed., 136, 137; 3 Dav. Prec. 176, note, *In re Buckley*.

Where the trust estate originally comprises land, or there is a power to purchase land, s. 42 of the late Act, supplying the usual minority provisions in the case of an infant entitled to land, should also be considered. That clause gives the "trustees," as there defined (sub-s. 1), a power (among others) of maintenance, with a provision for accumulation of the surplus rents, substantially similar to the provisions of s. 43; but as regards the destination of the accumulations, the two clauses are in some cases at variance; and in settlements of land it will in general be desirable to insert an express provision as to this, so as to exclude the Act. But the provisions of s. 42 are not in all respects (especially in the trusts of the accumulations) adapted to land settled as personalty by means of a trust for sale, and it may be held not to apply to that case; and it clearly does not apply where the infant has only a contingent interest, as in an ordinary settlement of that kind, where the children take interests vesting at twenty-one, &c., and in that case the Act may be relied upon. But where there is an infant tenant for life, the inconsistency above adverted to between the two clauses (if they both apply) would arise, and an express trust of the accumulations should be inserted.

As to inserting maintenance clause.

Clause 43 of the Act appears to be sufficiently general in its application to enable the maintenance and accumulation clauses to be omitted in ordinary settlements of personal estate (subject to the above question as to land held as personalty); but although unnecessary they are sometimes inserted in order that the powers of the trustees in this respect may appear on the face of the settlement.

Addition to clause.

Where circumstances require it the words, "whether there is any other fund applicable or any pson bound by law to provide for such maintenance or education or not," (following the words of the Act), may be added to the clause in the text after "benefit;" the words, "or any person," &c., being omitted where the father takes a life interest. See 3 Dav. Prec., pp. 180, 181, note.

As to form of clause.

The maintenance clause is usually expressed, as in the text, in the form of a trust, and not a mere power; but if the father does not take a life interest it should be altered in this respect to exclude any contention that the father has a right to require an allowance out of the income, according to *Munday v. Earl Howe*, 4 Bro. C. C. 224; but see *Wilson v. Turner*, 22 Ch. D. 521, where the form was similar to that in the text.

(b) Where the children may be maintained as a class, say, "income of the share or shares in the sd trust premes to which any child or children of the sd intd marre shall for the time being be entled in expectancy for or towards his or her

sd trust premes to which any child of the sd intd marre shall for the time being be entled in expectancy under the trusts hinbefore decl'd for or towards his or her maintenance, education, or benefit, and may either themselves or himself so apply the same, or may pay the same to the guardian or guardians of such child for the ppose afsd without seeing to the application thof.

XXXIV. AND SHALL, during such suspense of absolute vesting as afsd, accumulate the surplus, if any, of the same income at compound interest, by investing the same, and the resulting income thof, in any of the investmts hinbefore authorised, for the benefit of the pson or psons who shall eventually become entled to the principal fund from which the same shall have proceeded, and may apply the accumulations of any preceding year or years in or towards the maintenance or education of the child for the time being presumptively entled thto (c), in the same mner as such accumulations might have been applied had they been income arising from the original trust fund in the then current year.

XXXV. AND IT IS HBY AGREED that if there shall be no child of the sd intd marre, who being a son shall attain the age of 21 years, or being a daughter shall attain that age or marry [with such consent as afsd] then, subj't to the trusts and powers hinbefore decl'd and contd [*if the statutory maintenance power is relied on add*, "or by law vested in the sd trees or tree,"] the sd trees or tree shall stand possessed of the sd — and premes, and the investmts representing the same [the sd trust premes] and the income thof (d), [*if the hus-*

Accumulation clause.

Ultimate trusts.

maintenance or education, or towards their common maintenance or education, and may either themselves," &c.

(c) Where the children may be maintained as a class, substitute for the words, "child for the time being presumptively entled thto," the words, "child or children for the time being the objects of the trust for maintenance and education hinbefore contd."

(d) If the ultimate trusts of the husband's and wife's property are declared

Of husband's property.
Of wife's property (c).

band's property, IN TRUST for the sd, *husband*, his exs, ads, and assigns], [if *the wife's property*, IN TRUST for such pson or psons, and for such pposes as the sd, *wife*, shall, while discovert by deed revocable or irrevocable, or whether covert or discovert, by will or codicil, appoint; And in default of and subjt to any such appointmt, if the sd, *wife*, shall survive the sd, *husband*, IN TRUST for the sd, *wife*, her exs, ads, and assigns, and so that during the sd intd coverture she shall not have power to anticipate the same, but if the sd, *husband*, shall survive the sd, *wife*, then IN TRUST for such pson or psons as would have become entled thto under the statutes for the distribution of the psonal este of intestates at the death of the sd, *wife*, had she died possessed thof intestate, and without having been married (f),

by one clause, continue from this point as follows :—" upon the trusts following, that is to say, as to the sd — and premes, *the husband's property*, and the investmts representing the same, and the income thof, IN TRUST for the sd, *husband*, his exs, ads, and assigns, and as to the sd — and premes, *the wife's property*, and the investmts representing the same, and the income thof, IN TRUST for such pson or psons, &c.," as in the text.

As to frame of ultimate trust of wife's property.

(e) This trust is framed with the object of preventing the wife from making any disposition, except by will, in favour of the husband, the power of appointment being during the coverture testamentary only, and the wife's interest in default of appointment, if she survives, being subject to restraint on alienation (as to which see p. 439, note). But the power after the determination of the coverture (which would apply not only where the husband is dead, but also in case of a divorce, see 3 Dav. Prec., p. 187), is exercisable by deed or will. If it is intended to exclude the wife from making a will in favour of the husband, the following may be added after the power of appointment, "but so that such testamentary power of appointmt shall during the sd intd coverture be exercisable in favour only of relations in blood of the sd, *wife*," or, "of psons of her blood and kindred."

As to frame of ultimate trust excluding husband and issue.

(f) This form of trust is intended to exclude both the husband, and any children of the marriage who may have died before attaining a vested interest under the previous trusts; see 3 Dav. Prec., p. 181. The case of *Upton v. Brown*, 12 Ch. D. 872, in which such a trust was construed as if the words, "without having been married," were equivalent to "un-

such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes.]

xxxvi. PROVID ALWAYS and it is hereby agreed that the said, General direction that interests of wife are without power of anticipation (g). wife, shall not have power during the said intended coverture to dispose of or charge any estate or interest of whatsoever nature, and whether in possession, reversion, remainder, or expectancy hereby given to her in the trust property and premises hereby settled or agreed to be settled by way of anticipation.

married," i.e. "not having a husband surviving," so as to let in a child who had died in infancy, has been overruled by *Emmins v. Bradford*, 13 Ch. D. 493. If the intended wife is a widow having issue by a former marriage, who are not intended to be excluded, add after "without having been married," "to the said, husband." See *Emmins v. Bradford*. This form of trust could not of course be used if the wife is illegitimate.

It has been questioned whether the Married Women's Property Act, 1882 (ss. 1, 2, 5), does not operate to deprive a husband of all his common law rights in respect of his wife's property, not only during his life, but also in the event of her death intestate. See *Wolstenholme & Turner on the Conveyancing, &c.*, Acts, 3rd ed., p. 8. Under the old law, the separate use being a merely equitable estate, and ceasing on the wife's death, the husband's rights thereupon took effect in respect of the wife's separate estate of which she died intestate, namely, his right to her freeholds as tenant by the curtesy (*Cooper v. Macdonald*, 7 Ch. D. 288; *Eager v. Furnivall*, 17 Ch. D. 115); to her leaseholds by survivorship (*Archer v. Lavender*, 9 Ir. R. Eq. 220); to her personal chattels, *jure mariti* (*Bird v. Peagram*, 18 C. B. 639; *Molony v. Kennedy*, 10 Sim. 254; *Johnston v. Lumb*, 15 Sim. 308); and to her choses in action on taking out administration (*Proudley v. Fielder*, 2 Myl. & K. 57). See also *Musters v. Wright*, 2 De G. & Sm. 777.

Under the late Act a married woman is for the purpose of "acquiring, holding and disposing of" her property made a *feme sole*, so that during the coverture the husband's rights are altogether excluded at law and in equity; but in the absence of any express enactment this could not it is conceived be held to involve the serious consequence that the wife's undisposed of property is to devolve after her death as if she had been a *feme sole*; and the argument for the exclusion of the husband would exclude the children also. The case of *Re Worman*, 1 Sw. & Tr. 513, appears to be no authority on the point, as it was decided on an express enactment in 20 & 21 Vict. c. 85, s. 25, applying to judicial separations, and extended by s. 21 to protection orders, that the property of the wife dying intestate should go "as if the husband were dead."

(g) See p. 440, note. Where the wife takes several interests under the settlement it may be convenient to provide for this by a separate clause in this form.

Trusts of
life policy
by refer-
ence.

XXXVII. AND IT IS HBY AGRD, that the sd trees or tree shall stand possessed of the monies which shall be received by them or him in respect of the sd policy [respive policies] of assurance on the life of the sd — hby assigned, [or, hinbefore recited to have been effected], and of the investmts representing the same, and the income thof respily, upon the trusts, and with and subjt to the powers and provons hinbefore decl'd and contd concerning the monies to arise from the sale of the sd —, and the investmts representing the same, and the income thof respily, or as near thto as the deaths of pties and other circes will admit [save and except that if there shall be no child of the sd intd marre who being a son shall attain the age of 21 years, or being a daughter shall attain that age or marry [with such consent as afsd] then subjt to the trusts and powers afsd [if the *statutory maintenance power is relied on, add, "or by law vested in the sd trees or tree"]*, the sd trees or tree shall stand possessed of the sd policy monies and the investmts and income thof in trust for the sd, *settlor*, his exs, ads, and assigns.]

Variation
in ultimate
trust.

Covenant
to keep up
policy.

XXXVIII. AND THE SD, *husband*, doth hby covenant with the sd, *trustees*, their exs, ads, and assigns, that if the sd intd marre shall take place, he, the sd, *husband*, will not do or suffer anything whby the sd policy [respive policies] of assurance may become void or voidable, or whby the sd trees or tree may be prevented from receiving the monies to become payable thereunder [respily], or any pt thof, and that if the sd [any such] policy has or shall become voidable, he, the sd, *husband*, will immediately thereupon, at his own cost, do all things necessary for restoring or keeping on foot the same; And that if the sd [any such] policy, or any new policy to be effected as hinafter is mentd has or shall become void the sd, *husband*, will immediately thereupon, at his own cost, effect or enable the sd trees or tree to effect a new policy or policies on his life, in their or his names or name, in such sum or sums as would have been payable under the policy or policies which shall have become void if the sd,

husband, had then died ; AND THAT every such substituted policy, and the monies to become payable under the same, shall be held and applied upon the trusts, and with and subjt to the powers and provons hby decld and expd concerning the sd original policy [policies] and the monies to become payable thereunder ; AND FURTHER, THAT he, the sd, *husband*, will duly and punctually pay the annual premiums and other sum or sums of money, if any, necessary for keeping on foot the sd original policy [policies], and any substituted policy or policies, and will forthwith deliver the rect for every such paymt to the sd trees or tree.

XXXIX. AND IT IS HBY AGRD that it shall be lawful for the sd trees or tree, if in their or his uncontrolled discretion they or he shall think fit, to apply any pt of the income or capital of the sd trust premes in or towards paymt of the annual premiums and other sums, if any, necessary for keeping on foot, or restoring the sd policy [respive policies] of assurance, or any such substituted policy as afsd, or for effecting any such substituted policy, or to borrow the amount required for any such ppose from any pson interested in the sd trust premes, or from any other pson or psons, at interest on the secy of the sd policy or policies [and the other ppty hby settled, or agrd to be settled, or any pt thof] (a) ; PROVD ALWAYS, that any monies applied by the sd trees or tree out of any income or capital not belonging to the sd, *husband*, for keeping on foot, restoring, or effecting any such policy as afsd, or in paymt of any monies borrowed for such ppose as afsd, or the interest thereon, shall, if the sd trees or tree shall so think fit, be recouped out of such of the sd trust premes, whether capital or income, as shall be payable to, or become vested in the sd, *husband*, his exs, ads, or assigns.

XL. PROVD ALWAYS, and it is hby agrd, that any bonus or bonuses which may from time to time be decld in respect of the sd policy [either of the sd policies] of assurance, or any such substituted policy as afsd, may (but subjt to the rules

Power to trustees to keep up policy out of trust property or by borrowing money.

Option of applying bonuses in diminution of premiums.

(a) See *Clack v. Holland*, 19 Bea. 262.

or any resolution of the Assurance Society in that behalf) be at the option of the sd, *husband*, applied either wholly or partially in reduction of the premiums upon such policy, and in default of, and subjt to any exercise of the sd option, such bonus or bonuses shall be added to, and be subjt to the same trusts, powers, and provons, as the monies assured by the sd policy.

Power to
surrender
policy and
trust to
accumulate
proceeds.

XLI. PROVD ALWAYS, and it is hby agrd that it shall be lawful for the sd trees or tree, if in their or his uncontrolled discretion they or he shall think fit, but during the life of the sd, *wife*, with her consent in writing, to sell the sd policy [respise policies], or any such substituted policy as afsd, either by way of surrender to the office or otherwise, and they or he shall hold the net proceeds of such sale upon trust to accumulate the same in the way of compound interest during the then residue of the life of the sd, *husband* (b), by investing the same, and the resulting income thof, in any of the investmts hinbefore authorised, and from and after the death of the sd, *husband*, shall hold such accumulated fund, and the income thof, upon the trusts, and with and subjt to the powers and provons hinbefore decl'd and contd concerning the investmts representing the sum or sums of money assured by such policy or policies, and the income thof.

Proviso
in case of
policy laps-
ing when
husband's
life is not
insurable.

XLII. PROVD ALWAYS, and it is hby agrd that if the sd original policy [policies, or either of them] or any such substituted policy as afsd, shall become void, and the life of the sd, *husband*, shall not then be insurable, or shall be insurable at a premium more than double the premium for the insurance of a healthy male of his then age, then the sd trees or tree shall, unless in their or his uncontrolled discretion they or he shall determine not so to do, yearly, and every year during the then residue of the life of the sd, *husband*, or such pt thof as they or he shall think fit, set aside out of the income of the sd —, *the husband's fortune*,

(b) It is conceived that this is not obnoxious to the Thellusson Act, 39 & 40 Geo. III. c. 98, if the husband is the settlor.

such sum of money as shall be equal to double the yearly premium required for insuring in such office as they or he shall select the paymt on the death of a healthy male of the same age as the sd, *husband*, at the time of such policy [respive policies] becoming void, of the sum which would have been payable on the same policy [respive policies] if the sd, *husband*, had then died, and shall accumulate the same, &c., as in last form.

XLIII. PROVD ALWAYS and it is hby agrd that the sd trees or tree shall not be chargeable or responsible for any omission or neglect to enforce the covenants hinbefore contd on the pt of the sd, *husband*, in relation to the sd original policy [policies, or either of them], or any substituted policy, or to keep up or restore any such policy, psuant to the provons hinbefore contd, or for any such policy lapsing or becoming void by any means whatsoever.

XLIV. PROVD ALWAYS, and it is hby agrd that it shall be lawful for the sd trees or tree to apply any pt of the capital of the sd trust premes in or towards paymt of the calls on any shares for the time being forming pt of the sd trust premes.

XLV. AND THE SD — doth hby covenant with the sd, *trustees*, their exs, ads, and assigns, that in case the sd intd marre shall take place, he, the sd, *covenantor*, his exs or ads, will, within six calendar months from the sd marre, pay to the sd trees or tree the sum of £—— with interest thereon at the rate of —— per cent. per annum, from such marre; and if the sd sum of £—— shall not be paid within such six calendar months, will pay to the sd trees or tree interest for the same, or for the unpaid pt thof for the time being, at the rate afsd by equal half-yearly paymts, the first of such paymts to be made at the end of six calendar months from the sd marre: PROVD ALWAYS that the sd trees or tree shall not require paymt of the sd principal sum of £——, or any pt thof, [where the husband covenants say, in the lifetime of the sd, *husband*, without the consent in writing of

Proviso
protecting
trustees in
case of
lapse of
policy.

Power to
pay calls
on shares.

Covenant
by hus-
band or by
father of
husband or
wife for
payment of
a gross sum
to the trus-
tees, with
interest in
the mean-
time (c).

(c) The enactment in the Bankruptcy Act, 1869, s. 91, invalidating covenants by traders for the settlement of future acquired property, does not apply to a covenant of this kind, *Exp. Bishop*, L. R. 3 Ch. App. 718.

the sd, *wife*,] [*where the father of husband or wife covenants, say, in the lifetime of the sd, covenantor, without the consent in writing of the sd, husband, and, wife, or the survivor of them,*] [and after the death of the sd, *wife*, [such survivor,] in the lifetime of the sd, *covenantor*, without the concurrence of all the trees for the time being, if more than one]; and that the sd trees or tree shall not be liable for any loss occasioned by their or his omission or neglect to enforce the sd covenant in the lifetime of the sd, *covenantor*: PROV'D ALSO that the sd, *covenantor*, shall be at full liberty to pay the sd sum of £——, or any pt thof, to the sd trees or tree at any time during his life, although paymt thof shall not have been called for (b): AND IT IS HBY AGRD that the sd principal sum hinbefore covenanted to be paid by the sd, *covenantor*, and the investmts representing the same, and the interest and income thof resply shall be held and applied by the sd trees or tree upon the like trusts, and subj't to the like powers and provons as are herein decl'd and cont'd concerning the sd —, and the investmts thof, and the income thof resply [save and except that if there shall be no child of the sd intd marre, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry [with such consent as afsd], then subj't to the trusts and powers afsd the sd trees or tree shall stand possessed of the sd principal sum so to be paid, and the investmts and income thof in trust for the sd, *covenantor*, his exs, ads, and assigns].

Declaration
of trust.

(b) The following form of proviso will sometimes be appropriate :—

Proviso
as to sum
secured by
covenant.

“ PROV'D ALWAYS that it shall be entirely in the option of the sd, *covenantor*, to pay the sd sum of £—— or any pt thof in his lifetime or not, and that after his decease the sd trees or tree shall have full discretion either to call in and compel paymt of the sd sum of £—— or the unpaid pt thof, or to leave the same on the secy of the covenant hinbefore cont'd, or on such other secy as may be arranged between them or him and the hrs, exs, or ads of the sd, *covenantor*, for such time as the sd trees or tree may think proper without being liable for any loss thby occasioned.”

XLVI. AND THE SD — doth hby covenant with the sd, *trustees*, their exs, ads, and assigns, that in case the sd *intd marre* shall take place, the exs or ads of him the sd, *covenantor*, shall within six calendar months after his death pay to the sd trees or tree the sum of £—— with interest thereon at the rate of —— per cent. per annum from the day of his death: **PROVD ALWAYS** that the sd, *covenantor*, shall be at liberty to pay the sd sum of £——, or any pt thof, to the sd trees or tree at any time during his lifetime.

Declaration of trust as in last form.

XLVII. AND THE SD, father, doth hby covenant with the sd, *trustees*, their exs, ads, and assigns, that if the sd *intd marre* shall take place, and if at the death of the [survivor of the] sd, *father*, [and —— his wife], the pt or share or pts or shares by the sd deed-poll of the —— day of ——, [or, hby] appointed to, or in favour of, the sd, *husband or wife*, or to which he [she] may become entled in default of appointment, of or in the ppty comprd in, or subjt to the trusts of the sd indre of the —— day of ——, [or, the will and codicils of the sd ——] shall not amount in value in the whole to the sum of £——, then the exs or ads of the sd, *father*, shall within —— calendar months after the death of the [survivor of the] sd, *father*, [and —— his wife] pay to the sd trees or tree such a sum of money as, with the value computed as afsd of the sd pt or share, or pts or shares, shall make up the sum of £——, with interest thereon at the rate of —— per cent. per annum from the death of the [survivor of the] sd, *father*, [and —— his wife]: *Declaration that the principal sum, &c., shall be held upon the like trusts as*, “any principal monies to be received by the sd trees or tree from or in respect of the pt or share so appointed as afsd, &c.,” see form XLV.

XLVIII. AND THE sd, covenantor, doth hby covenant with the sd, *trustees*, their exs, ads, and assigns, that in case the

(c) Where the instructions are to insert a covenant to leave a sum by will to be held upon the trusts of the settlement, this form should be adopted. See 3 Dav. Prec. p. 804, n. For a form of covenant to give by will an aliquot share of the covenantor's estate, see *id.* p. 844, note; but such covenants are open to great objections, see *id.*, p. 805, note.

annuity to
trustees.
With varia-
tions.

sd intd marre shall take place be the sd, *covenantor* [his hrs, exs, or ads], will pay to the sd trees or tree the yearly sum of £—— during the life of him the sd, *covenantor*, commencing from the sd intd marre, or, “such yearly sum as is hinafter mentd, that is to say” [during the joint lives of the sd, *covenantor*, and, *husband*, the yearly sum of £——, commencing from the sd intd marre, and in case the sd, *husband*, shall die in the lifetime of the sd, *covenantor*, then during the remainder of the life of the sd, *covenantor*, if and so long as the sd, *wife*, or any issue of the sd intd marre, shall be living, the yearly sum of £——, commencing from the death of the sd, *husband*,] [during the life of the sd, *covenantor*, if and so long as the sd, *husband*, or the sd, *wife*, or any issue of the sd intd marre shall be living, the yearly sum of £——, commencing from the sd intd marre, and after the death of the sd, *covenantor*, in case the sd K., the wife of the sd, *covenantor*, shall survive him, then during the remainder of the life of the sd K., if and so long as the sd, *husband*, or the sd, *wife*, or any issue of the sd intd marre shall be living, the yearly sum of £——, commencing after the death of the sd, *covenantor*] [during the joint lives of the sd, *husband*, and, *wife*, the sum of £——, commencing from the sd intd marre, and in case the sd, *wife*, shall die in the lifetime of the sd, *husband*, leaving any issue of the sd intd marre, then during the remainder of the life of the sd, *husband*, if and so long as any issue of the sd intd marre shall be living, the yearly sum of £——, commencing from the death of the sd, *wife*], such sum of £—— [or £——, as the case may be] to be payable by equal half-yearly [quarterly] paymts, on the —— day of ——, &c., or, “on the usual quarter days,” but to be deemed to accrue from day to day, [so as to be apportionable according to law at the commencement and termination thof] (d). [AND THE sd,

Charge of
annuity

(d) Add, if so intended, “PROVD ALWAYS that if the sd, *husband*, shall be instituted to any ecclesiastical benefice of the net annual value of not less than £——, or, ‘shall become a Lieut.-Colonel in Her Majesty’s Army,’ then the sd annuity of £—— shall cease to be payable.”

covenantor, doth hby charge the sd annual sum of £—, on life interest under prior settlement. [sum of £—, or £—, as the case may be] hinbefore covenanted to be paid by him on his life interest under the sd indre of settlemt, of, &c., in the sd trust premes [a share of which is hby settled,] and doth hby direct that the trees or tree for the time being of the sd indre of settlemt shall from time to time pay such annual sum accordingly out of the income and annual produce of the same trust premes in satisfon of the covenant of the sd, *covenantor*, in that behalf hinbefore contd].

XLIX. AND IT IS HBY AGRD AND DECLD that the sd trees Declaration of trust of annuity. or tree shall stand possessed of the sd yearly sum of £— [or £—, as the case may be for the time being] payable under the covenant of the sd, *covenantor*, hinbefore contd upon trust to [pay the same to the sd — or his assigns during his life and afterwards to (e)] pay or apply the same to the pson or psons for the pposes and in the mner to whom and for and in which the income of the sd trust premes hby assigned or settled by or on the pt of the sd K., *or as the case may be*, would for the time being be payable or applicable under or by virtue of the trusts, powers, and provons herein decld and contd [if the same had fallen into possion].

L. PROVD ALWAYS that if the sd, *covenantor*, shall by Proviso as to taking legacy in satisfaction of annuity. will or codicil bequeath any legacy or property to or in trust for the sd, *husband*, or the sd, *wife*, or to or in trust for the sd, *husband*, and, *wife*, and their children or issue or any of them, then (unless the sd, *covenantor*, shall by will or codicil or otherwise in writing direct the contrary) if such legacy or ppty shall amount in value to the sum of £—, the sd annuity of £— shall not become, or, “shall cease to be,” payable, and if the sd legacy or ppty shall be less in value than £—, then the same shall go and be accepted in reduction proportionately (according to the value thof) of the sd annuity of £—.

(e) These words will be inserted where the person who takes the first lif nterest in the annuity does not take the first life interest in any other part of the settled property.

Covenant restricting the exercise of a testamentary power of appointment among children (f).

LI. AND THE SD — doth hby covenant with the sd, *trustees*, their *exs*, *ads*, and assigns, that he, the sd, *covenantor*, will not exercise the power of testamentary appointment given to him by the sd indre of settlemt, of, &c., as afsd, so as by any means to reduce the share or interest of the sd — in the trust funds and premes now or hereafter subj to the trusts of the same indre, to a less amount than the share to which the sd — would be entled in default of any exercise of the sd power of testamentary appointment, and if the same trust premes had wholly devolved under the trust in default of appointment in the sd indre of settlemt contd.

Trust for sale of real estate.

Variations for leaseholds (g).

LII. UPON TRUST that the sd, *trustees*, or the [survors or] survor of them, or the *exs* or *ads* (h) of such survor or other the trees or tree for the time being of these presents (hinafter called the sd trees or tree (i)) shall at the request

As to covenants restricting the exercise of a testamentary power of appointment.

(f) Although a covenant of this nature was upheld in *Davies v. Huguenin*, 1 H. & M. 730; its validity has been questioned in other cases, see *Coffin v. Cooper*, 2 Dr. & Sm. 365; *Bullock v. Plummer*, L. R. 6 Ch. Ap. 160; *Thacker v. Key*, L. R. 8 Eq. 408; *Palmer v. Locke*, 15 Ch. D. 294. But the objection appears to be removed by the Conv. Act, 1881, s. 52, enacting that a person to whom any power (created before or after the Act, whether coupled with an interest or not), is given, may by deed release or contract not to exercise the power; unless this, being a power of a fiduciary nature, should be held not to be within the enactment; see *Weller v. Ker*, L. R. 1 Sc. Ap. 11.

Settlement by way of trust for sale.

(g) Land when not entailed is very commonly settled, by means of a trust for sale, as personal estate, a mode of settlement which, by enabling the ordinary forms for settlements of personalty to be used in declaring the trusts of the proceeds, is very convenient in practice, especially where the settlement also comprises personalty. It is usual, at any rate where the property or any part of it is likely to be sold, to effect the settlement by two deeds, the first containing the conveyance in trust for sale, with the powers of leasing, &c., if required, until sale, and the second deed, the settlement, containing the trusts of the proceeds, in order that the settlement may not become part of

Devolution of trust estates in freeholds or copyholds.

(h) The expression “*exs*, and *ads*,” and not “*hrs*,” is now proper in declaring trusts of freehold or copyhold as well as leasehold land, since a trust estate in land devolves under the Conv. Act, 1881, s. 30, on the personal representatives of the surviving trustee. The practical convenience resulting from the legal estate in the realty going in the same manner as the personalty is considerable, and it has the advantage of enabling the expression “the sd trees or tree,” as interpreted in p. 433, to be used with respect to both descriptions of property.

(i) See p. 433, note (e).

in writing of the sd, *husband*, and, *wife*, or the survivor of them, during their, his, or her life, and after the decease of such survivor, at the discretion of the sd trees or tree, sell

the title to the land. But if, in the event, the land is retained unsold this object would be defeated.

By the Settled Land Act, 1882 (the provisions of which are noticed more particularly *infra*, SETTLEMENTS REAL), s. 63, the Act is extended to the case of Settled Land Act. where land or any estate or interest in land of any tenure (including incorporeal hereditaments) is settled by means of a trust for sale, and for the application or disposal of the money to arise from the sale, or the income thereof, or the rents and profits until sale, or any part thereof, for the benefit of any person, or two or more persons concurrently, for life or any limited period, and whether absolutely, or subject to a trust for accumulation or any other restriction; the powers of leasing and sale and other powers of the Act being vested in the person or persons for the time being beneficially entitled to the rents and profits until sale, whether absolutely or subject as aforesaid. The general provisions of the Act will apply to the case, subject to the special provisions of s. 63.

As to the application of the Act in the case of tenants in common, &c., see Tenants in s. 19; and as to infants, married women, and lunatics, see ss. 59—62, Vol. I., common, p. 839, note. &c.

Under an ordinary marriage settlement of this kind the husband or wife who is tenant for life (and as to the latter notwithstanding a restraint on anticipation), and after their decease the adult children with the concurrence of the trustees on behalf of the infants (if any) will have the statutory power of sale (concurrently with the express power vested in the trustees), as well as powers of leasing and exchange and the other powers of the Act where applicable; and by s. 56, the consent of the tenant or tenants for life or other persons or person in whom the statutory powers are vested (if any) will be necessary to a sale by the trustees under the express trust or to the exercise by them of any other express powers given to them for the same purposes as the statutory powers. Where the settlement is effected by two deeds, the trusts of the rents until sale are usually declared by the second deed containing the trusts of the proceeds of sale; but as this would now bring the second deed onto the title by necessitating its production on a sale to show in whom the statutory powers are vested (whether the sale is made by the tenant for life under the statutory power or by the trustees under the express trust with his consent), it seems desirable that the trusts of the rents until sale should, as far as regards the life estates, be declared by the first deed.

As the statutory powers are comprehensive, and generally sufficient, and in some respects more convenient than express powers (*e.g.* in enabling a tenant for life of leaseholds or copyholds vested in trustees to make a legal lease, which could not otherwise be done without the concurrence of the trustees), and as the statutory powers would under the ordinary trusts be vested in the tenant for life for the time being, and in the case of a married woman notwithstanding a restraint on anticipation (see s. 61), the insertion of express powers of leasing, &c., would in general be useless during the subsistence of the life

the sd hereds and premes hby assured (k) [either subj to any charges affecting the sd premes or not and either togr or in parcels, by public auction or private contract, and subj to such condons as they or he shall think fit, with power to buy in or rescind or vary any contract for sale, and to re-sell without being responsible for loss, and for the pposes afsd, or any of them, to execute and do all such assurances and things as they or he shall think fit (l)].

estates. But in case there should be a doubt as to the operation of the Act after the deaths of the tenants for life, it may be desirable to give express powers to the trustees in that event; and in any case in which the Act does not apply or its application is doubtful, express powers should of course be inserted; e.g. where there is a life estate subject to forfeiture on bankruptcy, &c., with the common discretionary trust for the application of the rents or income after forfeiture; see Vol. I., p. 836, note, and *infra*.

Investment of capital monies. It should be noted that the tenant for life has under s. 22 the control over the investment of the proceeds of sales or other capital money arising from the exercise of the statutory powers; and also, under s. 33, where the money arises from the exercise of the express powers or trusts of the "settlement" (see the definition of that word in ss. 2 and 63).

As to supplementing powers of the Act. By s. 57 any powers conferred by the settlement on the tenant for life or trustees additional to or larger than those of the Act are to operate and be exercisable in like manner as if they were conferred by the Act, unless a contrary intention is expressed. This enables the powers of the Act to be supplemented when required; but the intention that any additional powers given should so operate should be expressed.

Mansion house. If the property is a residential one comprising a mansion house or other residence, &c. (see Vol. I., p. 837, note), there should if so intended be a provision that it may be sold or leased under the Act without the consent of the trustees or Court under s. 15.

Notices. The necessity for giving the notices required by s. 45 should also generally be dispensed with on the exercise by the tenant for life of his statutory powers, at any rate in the case of leases.

(k) Or, 'granted,' 'assigned,' or, 'covenanted to be surrendered,' or as the case may be.

Powers of sale under Conv. Act, 1881, and Settled Land Act. (l) The words in this bracket may now be omitted, as all the powers thereby conferred are given to trustees for sale by the Conv. Act, 1881, s. 35, unless a contrary intention is expressed or shown. The following words might be substituted:—"with all the powers in that behalf of an absolute owner;" and more special powers of dealing with prior incumbrances may sometimes be needed as in p. 25, note (b). See as to this the Conv. Act, 1881, s. 5, and the Settled Land Act, 1882, ss. 5, 24.

Power to apportion In a settlement of leaseholds held under one lease, or lands subject to an entire fee farm rent, which admit of subdivision, add:—"with power on

LIII. AND IT IS HBY FURTHER AGRD that the sd hereds and premes or any pt or pts thof may be sold by the sd trees or tree, under the trust for sale hinbefore contd, in conson of a perpetual yearly rentcharge to be limited or reserved out of and secured upon the hereds sold or any pt thof or any other hereds or partly in conson of such a rentcharge and partly of a gross sum of money and that any such rentcharge shall be limited or reserved and secured and made payable in such mner as to the sd trees or tree shall seem expedient: And further that every such rentcharge shall be held by the sd trees or tree upon the like trusts and with and subjt to the like powers and provons (so far as subsisting and applicable) as are herein decl'd and contd of and concerning the sd hereds and premes hby assured including the trust for sale hinbefore contd.

Power to
sell for fee
farm rent.

LIV. AND SHALL out of the monies arising from any such sale pay the costs of such sale or otherwise incurred in respect of the premes, and shall hold the residue of such sale monies upon the trusts and with and subjt to the powers and provons hinafter decl'd concerning the same, and shall pay and apply the net rents and profits of the same premes or of the unsold part thof for the time being (m) to the pson or psons and for the pposes to and for which the

Declaration
of trust of
sale monies
and rents
till sale
where the
conveyance
and settle-
ment are
effected by
one deed.

any sale of pt of the hereds comprd in a lease at a rent or pt of the land subjt to an entire perpetual rentcharge to apportion such rent or rentcharge and to make such provon for securing the paymt of the apportioned pts thof and the performance and observance of the covenants and condons of the lease or grant affecting the several pts of the premes and for the mutual indemnity of the pties by the creation of powers of distress and entry and otherwise as may be deemed proper."

leasehold
or fee farm
rents.

(m) If there is a power to sell for a rent-charge, insert here, "and if any of the sd premes shall be sold in conson of a perpetual rent-charge, shall, until such rentcharge shall be sold, pay and apply the same."

Variation
for sale for
fee farm
rent.

income of the investmts hinafter directed to be made of the net monies to arise from the sale thereof would be payable or applicable under the trusts hinafter contd if such sale and investmt were actually made.

The same where the conveyance and settlement are effected by two deeds, (to be inserted in the conveyance) (a).

LV. AND SHALL out of the monies arising from any such sale pay the costs of such sale or otherwise incurred in respect of the premes, and shall hold the residue of such sale monies upon the trusts and with and subjt to the powers and provons decl'd and contd concerning the same resply in and by an indre already prepared, intd to bear even date with and to be executed immediately after these presents, and to be made between, *parties* [the same pties as these presents]. AND SHALL pay the rents and profits of the sd hereds and premes until the same resply shall be sold (b) to the sd, *husband*, and his assigns during his life [to the sd, *wife*, during her life, and so that during the sd intd coverture she shall not have power to anticipate the same], and after the death of the sd, *husband* [*wife*] shall pay the same to the sd, *wife*, and her assigns during her life, and so that during the sd intd coverture she shall not have power to dispose of or charge such reversionary life interest by anticipation [to the sd, *husband*, and his assigns during his life], and after the death of the survor of the sd, *husband*, and, *wife*, shall hold the rents and profits of the sd hereds and premes until the same shall be sold (b) upon the trusts and with and subjt to the powers and provons decl'd and contd concerning the same resply in and by the sd indre intd to bear even date herewith.

Declaration of trust of rents till sale where two deeds, (to be inserted in settlement) (a).

LVI. PROV'D ALWAYS and it is hby agrd that the sd trees or tree shall [after the death of the survor of the sd, *husband*, and, *wife*,] pay and apply the net rents and profits of the sd hereds and premes assured by the hinbefore recited indre of even date herewith, *the conveyance in trust for sale*, until the same shall be sold or of the unsold pt thof for the time being (b) to the pson or psons and for the pposes to and for

(a) See p. 463, note.

(b) See note (m) preceding page.

which the income of the investmts hinbefore directed to be made of the net monies to arise from the sale thof would be payable or applicable under the trusts hinbefore contd if such sale and investmt were actually made.

LVII. PROVID ALWAYS, and it is hby agrd, that it shall be lawful for the sd trees or tree, after the sd intd marre, and before all the sd hereds hby assured (d) shall be sold, to manage or superintend the managemt of the same premes, or of the unsold pt thof for the time being, including power to cut timber and underwood for sale, repairs, or otherwise, to open and work mines, minerals, quarries, and brickfields, and to erect, pull down, and repair houses and other buildings, and to drain and make roads and fences, and otherwise to improve all or any of the sd premes, and to insure houses and buildings against loss or damage by fire, and to make allowances to and arrangemts with tenants and others, and to accept surrenders of leases and tenancies, and generally to deal with the ppty as if they or he were absolute owners or owner thof, without being responsible for any loss or damage that may happen thby (e): AND ALSO power to delegate either expressly or by implication during such period or periods, and upon such terms as they or he shall think fit, the exercise of all or any of the powers of managemt and improvemt hinbefore contd to the sd, *husband*, or the sd, *wife*, or to any other pson interested under these presents, without being responsible for any loss occasioned thby: AND ALSO power conclusively to determine either by way of anticipation or otherwise, and either expressly or by implication what pt, if any, of the produce of timber, mines, minerals, quarries, or brickfields, shall be applied as capital, and what pt, if any, as income, and so that such pt as shall

Power to
manage
real estate
until sale.

(d) Or, 'granted,' 'assigned,' or 'covenanted to be surrendered,' or as the case may be.

(e) Where the person entitled in possession is an infant, most of these powers are given to the trustees by the Conv. Act, 1881, s. 42, if that section applies to a settlement by trust for sale, which however is doubtful; see p. 450, note.

be determined to be capital shall be disposed of as if the same were proceeds of a sale under the trust hinbefore contd: AND ALSO power to raise and pay the costs and expenses attending the exercise of the sd powers of managemt and improvemt out of the income, or as to any pt not exceeding two third pts of the sums, if any, expended in improvemts which they or he shall consider to be of a permanent nature, by mtge or sale under the trust for sale hinbefore contd or otherwise out of the capital of the sd trust premes.

The same.

Short form.

LVIII. AND IT IS HBY AGRD that it shall be lawful for the sd trees or tree to manage the sd hereds and premes until the same shall be sold, including power to cut timber and underwood for sale, repairs, or otherwise, and to repair and insure houses and buildings, and to make allowances to and arrangemts with tenants and others, and to accept surrenders of leases and tenancies, and also to delegate either expressly, or by implication, all or any of the powers lastly hinbefore contd to the pson for the time being entled to the rents and profits of the same premes, without being responsible for any loss thby occasioned: And also to determine whether the proceeds of timber cut, or any pt thof, shall be treated as income or capital, and so that the pt treated as capital shall be applied as if the same were proceeds of a sale under the trust hinbefore contd: And also power to pay the costs of managemt out of the rents and profits of the sd premes.

Power to trustees to grant leases of unsold land (f).

Leasing powers, effect of Settled Land Act.

LIX. AND IT IS HBY AGRD and decl'd that it shall be lawful for the sd trees or tree [with the consent of any pson or psons whose consent may be necessary in that behalf under

(f) See p. 463, note. This leasing power, as well as the next, operates concurrently with the powers of the Settled Land Act, 1882, so far as they may apply, and by s. 56 could not be exercised without the consent of the donee or donees of the statutory powers; with reference to which the words in brackets in the text may be inserted or not as is thought proper. If an express power is inserted this form would suffice for ordinary cases, but form LXIV., p. 472, giving this and other powers by reference to the Settled Land Act, and extending if need be the statutory powers, is much more comprehensive and to be preferred, and would operate conveniently in a case where the

any law for the time being in force] to demise all or any of the sd hereds and premes hby assured (g), and which shall for the time being remain unsold, for any term of years not exceeding twenty-one years [or for a mining lease not exceeding forty years, or for a building or improving lease not exceeding ninety-nine years] to take effect in possion or

application of the Act is doubtful. See also form LXV., p. 473, dispensing with s. 15 of the Act as to a mansion house, &c., which should be inserted in every case of a residential property, and form LXVI., p. 473, dispensing with the necessity of giving the statutory notices, which should generally be inserted at any rate as to leases.

The leasing as well as other powers have usually, in settlements by trust for sale, been given to the trustees; but where many leases have to be granted the powers are often conveniently vested in the tenant for life to avoid constant applications to the trustees, and this is now undoubtedly proper if an express power is inserted in aid or extension of the statute. A lease of freeholds by a tenant for life under an express power would operate as an appointment of the use so as to pass the legal estate under the Statute of Uses, but a lease of leaseholds or copyholds would operate in equity only, and the concurrence of the trustees would be necessary to pass the legal estate. Under the Settled Land Act a tenant for life can grant a legal lease of leaseholds or copyholds as well as freeholds, and if additional or larger powers are given to him by the settlement they will, unless otherwise expressed, operate in like manner, under s. 57 of the Act. But it should be noted that that section only applies where such powers are given to the donee or donees of the statutory powers, or to the trustees. Where an express leasing power (whether more extensive than the statutory powers or not) as to leaseholds or copyholds is given to any person other than such donee or donees or the trustees the following clause may be added:—"PROVD ALWAYS, and it is hby agrd and decld, that the sd trees or tree shall, if required by the sd, husband, and, wife, or the survivor of them, be bound (but without thby incurring any responsibility) to concur in any lease made by them, him, or her, under the power lastly hinbefore contd, or shall at any time afterwards, on being so required, confirm the same by demising the legal este to the lessee for the term granted by such lease, but so that any such demise by way of confirmation shall contain proper provons for annexing the benefit of the lessee's covenants and condons contd in the lease to the legal reversion."

(g) Or, 'granted,' 'assigned,' 'covenanted to be surrendered,' or as the case may be.

As to vesting leasing powers in tenant for life.

Provision as to concurrence of trustees in leases.

within six calendar months from the date of the lease, *or*, "for any term of years, either in possession or reversion, and for any purpose," with or without taking a fine or premium, and upon such terms and conditions in all respects, as they or he shall think fit, but so that any sum received as a fine or premium shall be applied as if the same were proceeds of a sale under the trusts hereinbefore contained, and so that in case any lease shall be granted on the surrender or determination of a then existing or prior lease or tenancy, the value of the interest so surrendered, or the tenant's right or claim to compensation for improvements or otherwise in respect of such tenancy, may be taken into account in fixing the rent and terms of the new lease (*h*).

Power to tenant for life, &c., to grant leases of unsold land (*a*).

LX. AND IT IS HEREBY AGREED that it shall be lawful for the said, *husband*, during his life, and after his decease for the said, *wife*, in case she shall survive him during her life, and after the decease of the survivor of them [*or*, for the said, *wife*, during her life, and after her decease for the said, *husband*, until the failure or determination of the trust hereinbefore decided in his favour (*b*) and afterwards], for the said trees or tree [with the consent, &c., *as in last form*] to demise, &c., *as in last form*.

Addition to powers of sale and leasing where a reversionary interest is settled.

LXI. PROVIDED ALWAYS and it is hereby agreed that no sale shall be made under the trust in that behalf hereinbefore contained of any of the said hereditaments which are reversionary until the same shall fall into possession, unless in the opinion of the said trees or tree an earlier sale would be beneficial [provided nevertheless that the same hereditaments or any part thereof may be sold or leased under the trusts or powers hereinbefore contained during the lifetime of the said, *prior tenant for life*, with his concurrence, so as to effect a sale in possession, or a lease to take effect in possession or within six calendar months from the date of the lease, and so that in case of any sale during the lifetime of

(*h*) Compare the Settled Land Act, 1882, s. 13 (5), as to this.

(*a*) See p. 468, note.

(*b*) See p. 464, note. The power might be given to the husband notwithstanding the forfeiture of his life interest; subject to the question whether the statutory power would in that event be subsisting so that the donees of such power would be necessary consenting parties, see Vol. I. p. 836, note.

the sd, *prior tenant for life*, the sd trees or tree shall with his consent in writing invest the net proceeds of such sale in the names or name [or under the legal control] of the sd trees or tree in or upon, &c., *investments*, p. 435 *et seq.*, and may with such consent as aforesaid, from time to time vary such investments: AND SHALL during the life of the sd, *prior tenant for life*, pay the income of the sd proceeds of sale and the investments representing the same to him or his assigns: AND AFTER HIS DEATH shall hold the same proceeds of sale and the investments thereof upon the trusts, &c., *as in form LIV. or LV.*] (c).

LXII. PROVID ALWAYS and it is hereby agreed that the several trusts and powers of sale, leasing, and management hereinbefore contained may be executed in relation to the undivided part or share [parts or shares] hereby assured (e) solely, or in conjunction with the person or persons entitled to or having power in that behalf over the other undivided part or share, parts or shares, of and in the sd hereditaments and premises in relation to the entirety of the sd premises or any part thereof, and so that in the latter case any proceeds of sale, rents, expenses, or outgoings may be apportioned after the same shall have been received, paid, or incurred [and that notwithstanding that any of the sd trees or a sole tree, may be entitled to or interested in or may be a tree of any of the other parts or shares of the sd premises] (f).

The same, where an undivided share is settled (d).

LXIII. PROVID ALWAYS and it is hereby agreed that it shall be lawful for the sd donee or donees [with the consent, &c., as

Power of partition (a).

(c) If the prior tenant for life is able to sell or lease under the Settled Land Act, 1882, the part bracketed might be omitted.

(d) As to sales and leases under the Settled Land Act, 1882, in the case of undivided shares, see ss. 2 (10 (i.)), 19.

(e) Or, 'granted,' 'assigned,' 'covenanted to be surrendered,' or as the case may be.

(f) This addition is desirable, as it often happens, owing to relations being appointed trustees, that the trustees of a settlement comprising an undivided share are interested in the other shares.

(a) This power is concurrent with that given by the Settled Land Act, 1882, s. 3 (iv.), if applicable; and could not be exercised without the consent of the donee of the statutory power (see p. 463, note, and *infra*, Settlements, Real).

in form LIX.], to concur with the pson or psons entled to or having power in that behalf over the other pt or share, pts or shares, of or in the sd hereds and premes, in making a partition of the same premes or any pt thof, [and that notwithstanding that any of the sd trees or a sole tree may be entled to or interested in or may be a tree of any of the other pts or shares of or in the same (b),] and to give or receive money for equality of partition, and to make any such partition upon such terms and condons as may be thought proper; and for the pposes afsd or any of them, to execute and do all such assurances and things as may be deemed necessary or expedient, and the hereds which shall on any such partition be taken in severalty, and the rents and profits thof resply shall be held upon and subjt to such trusts, powers, and provons as shall be subsisting and capable of taking effect by virtue of these presents concerning the sd pt or share, pts or shares, hby settled, and the rents and profits thof resply: PROVD ALWAYS and it is hby agrd that any monies agrd to be paid for equality of partition may be paid out of any monies in the hands of the sd trees or tree arising from a sale under the trusts hinbefore contd, or settled upon the same trusts as the monies so arising, or may be charged upon or raised by mtge of the hereds taken in severalty as afsd; AND ANY MONIES receivable for equality of partition shall be paid to the sd trees or tree and held by them or him upon the same trusts as if the same had arisen from a sale under the trusts afsd.

Clause giving powers of leasing, &c., by reference to Settled Land Act, 1882, and extending powers of Act (c).

LXIV. AND IT IS HBY AGRD that it shall be lawful for the sd, *donee or donees*, [with the consent, &c., as in form LIX.], to exercise in relation to the sd hereds and premes hby assured (d), all such powers of leasing and accepting surrenders of leases [and partitioning] and entering into,

(b) See p. 471, note (f).

(c) See p. 463, note, p. 468, note.

(d) Or, 'granted,' 'assigned,' 'covenanted to be surrendered,' or as the case may be.

varying, and rescinding contracts in that behalf, and powers incidental or subsidiary thto resply, and all such other powers of every description which may be applicable to the premes as are by the Settled Land Act, 1882, conferred on tenants for life, [and also (by way of extension or enlargemt of the powers of the sd Act, and to the intent that the additional or larger powers hinafter conferred shall as far as may be operate and be exerciseable in like mner, and with all the like incidents, effects, and consequences, as if the same had been conferred by the sd Act), power to, &c., *further powers, e.g., to grant leases for longer terms, or to make grants at fee farm rents, &c., see SETTLEMENTS REAL.*]

LXV. AND IT IS HBY FURTHER AGRD that [the sd mansion house or] any residence or dwelling house, and any lands usually occupied thwith which may for the time being be subjt to the trust for sale hinbefore contd may be sold or leased under the powers of the Settled Land Act, 1882, [and may be leased under the powers of these presents] without the consent of the sd trees or tree or any order of Court.

LXVI. AND IT IS HBY FURTHER AGRD that any powers of leasing [and partitioning] and entering into, varying, and rescinding contracts in that behalf, and powers incidental or subsidiary thto resply [and other powers of any description] which may be vested in any pson or psons other than the sd trees or tree in relation to the sd hereds and premes under the Settled Land Act, 1882, or these presents, may be exercised without giving any notice of the intention to exercise the same to any tree or the solor of any tree of these presents.

LXVII. PROVD ALWAYS, and it is hby agrd, that it shall be lawful for the sd trees or tree, during the lives or life of the sd, *husband*, and, *wife*, or the survor of them, at their, his, or her request in writing, to invest any monies arising from the sale or conversion (which the sd trees or tree are hby authorised to make for such ppose) of any investmts of the sd trust premes, or any other capital money subjt to the

(e) See p. 464, note.

trusts of these presents, in the pchase of any manors, mesuages, lands, or hereds, in England or Wales [or Ireland], of freehd, copyhd, or customary tenure, or held for any term of years of which not less than [50] years shall be unexpired at the time of such pchase, or in the enfranchisemt of any copyhd or customaryhd hereds pchased under the present power: And that all such hereds shall be assured to the sd trees or tree, their or his hrs, exs, ads, and assigns, according to the tenure thof (*g*), UPON TRUST that the sd trees or tree shall during the lives or life of the sd, *husband*, and, *wife*, or the survor of them, at their, his, or her request in writing, and after the decease of such survor, at the discretion of the sd trees or tree, sell such hereds (*h*), [either togr or in pcels, and either by public auction or private contract, and subj to such condons as they or he shall think fit, with power to buy in or rescind, or vary, any contract for sale, and to re-sell without being responsible for loss occasioned thby, and for the pposes afsd, or any of them, to execute and do all such assurances and things as they or he shall think fit (*a*):] AND UPON FURTHER TRUST that the sd trees or tree shall stand possessed of the net monies to arise from every such sale, after paymt of the costs thof, upon the same

Variation
for settle-
ment by
one deed.

(*g*) Where this power is contained in a settlement of land by trust for sale and declaration of trust of the proceeds effected by one deed, substitute at this point for the rest of the clause as follows:—"UPON THE TRUSTS and with and subj to the powers and provons hinbefore decl'd and contd concerning the hereds hby assured, or such of the sd trusts, powers, and provons as shall be subsisting or capable of taking effect."

Variation
for sale for
fee farm
rent.

(*h*) If so desired, add, "either wholly in conson of a gross sum of money or in conson partly of a perpetual yearly rentcharge to be limited or reserved out of and secured upon the hereds sold or any pt thof, or any other hereds, and partly of a gross sum of money."

(*a*) The part in brackets might be omitted, as these powers are supplied by the Conv. Act, 1881, s. 35.

trusts, and with and subjt to the same powers and provons, including the sd power of pchasing hereds, as the money laid out in the pchase of the hereds so sold would have been subjt to if the same had not been so laid out : AND IN THE MEAN-TIME and until all the sd pchased hereds shall be sold, the sd trees or tree shall have power to manage or superintend the managment of the same premes, and to make allowances to and arrangemts with tenants and others, and to accept surrenders of leases or tenancies : AND to demise all or any pt of the same premes, &c., *leasing powers, see pp. 468, 470, forms LIX., LX. (b)* : AND IN THE MEANTIME, and until all the sd pchased hereds shall be sold, the sd trees or tree shall pay and apply the rents and profits thof to the pson or psons, for the pposes, and in the mner to whom and for and in which the income of the trust premes applied in the pchase of the sd hereds would have been applicable if such pchase had not been made, it being the intention of the pties hto that the sd pchased hereds shall be considered as money, and shall be subjt in all respects to the same trusts as the money laid out in the pchase thof would have been subjt if such pchase had not been made (c). PROVID ALWAYS that, in the event of any leasehd hereds being pchased under the trust or power hinbefore contd, the sd trees or tree shall be entled to be indemnified to the fullest extent out of the trust este for the time being subjt to the

(b) The remarks in p. 468, note, as to the leasing powers, especially with reference to the Settled Land Act, 1882, are for the most part applicable to this case. If the purchase of land is in actual contemplation, it may be proper to insert more detailed and special powers of management, leasing, &c., according to the probable requirements of the case, either in full or as to the leasing and other powers by reference to the Settled Land Act.

(c) If sales in consideration of rentcharges are authorised, add, "AND Addition
IT IS HBY AGRD that in case the sd premes or any pt thof ^{for sale for}
shall be sold in conson of a perpetual rentcharge, every ^{fee farm}
such rentcharge shall be held upon the same trusts, includ-
ing the trust for sale, as if the same had been hereds pur-
chased under the power hinbefore contd."

trusts of these presents, and the rents and income thof, in respect of any liability incurred by them or him to the paymt of the rents and the performance of the covenants and condons reserved by or contd in the lease under which such premes are held, or under any covenants entered into by the sd trees or tree on the pchase of the same premes or otherwise in relation thto (d).

Power to
purchase
a house.
Short form.

LXVIII. PROV'D ALWAYS and it is hby agrd that the sd trees or tree shall at any time at the request in writing of the sd, *husband*, and, *wife*, or the survor of them, lay out any sum not exceeding £——, arising from the sale (which the sd trees or tree are hby authorized to effect), of any pt of the sd trust premes, in the pchase of a messuage with suitable out-buildings and offices and other appurts, and with or without gardens, pleasure grounds and land to be held thwith, as a residence for the sd, *husband*, and, *wife*, or the survor of them, such messuage and premes to be situate in England or Wales, and to be either freehd, or copyhd, or leasehd held for a term of which not less than [50] years shall be unexpired at the time of pchase, and to be assured to the sd trees or tree, their or his hrs, exs, ads, and assigns, as the case may require, UPON TRUST, during, &c., *trust for sale and trusts of proceeds as in preceding form: substituting, "messuage and premes," for, "hereds"*: AND the sd trees or tree shall until such sale permit the sd, *husband*, and, *wife*, or the survor of them, to occupy such messuage and premes, but with power to the sd, *husband*, and, *wife*, and the survor of them during their, his, and her lives and life, and afterwards for the sd trees or tree, to demise the same or any pt thof for any term not exceeding twenty-one years, to take effect in possion or within six calendar months from the date of the lease at rack-rent, the rent received under any such lease to be paid or applied in the same mner as the income arising from the proceeds of the sale of the sd messuage and premes would be payable or applicable if the same were sold.

(d) See as to this, 2 Dav. Prec., Part I., p. 423, note.

Proviso for indemnity of trustees in respect of leaseholds as in last form.

LXIX. AND IT IS HBY AGRD AND DECLD that if the sd, wife, shall at the time of the sd intd marre be, or if at any time during the sd intd coverture, she shall become seised, possessed, or entled, of or to (f) any real or personal ppty (other than the ppty hby specifically settled), for any este or interest whatsoever in possion, reversion, remainder, or expectancy (except ppty of a less value than £—— vesting in possion before or during the sd intd coverture at the same time and from the same source, and except moveable chattels or effects of household, domestic, or psonal use or ornamt, all of which excepted ppty it is hby decld shall be and remain the absolute ppty of the sd, wife, [and except

Agreement for settlement of wife's other and after-acquired property (e).

(e) As to the various points arising under agreements for the settlement of the wife's other and after-acquired property, see 3 Dav. Prec. pp. 194 *et seq.* An agreement in this form operates as a covenant by both husband and wife to the extent of the interests which they may respectively take after the marriage in the wife's existing or after-acquired property falling within the covenant. Prior to the Married Women's Property Act, 1882, such a covenant would have bound the husband to the extent of his marital interest, acquired during the coverture or after the wife's death; but the effect of the covenant is altered by that Act, which excludes the husband from taking any interest during the coverture in the wife's property, whether existing at the time of the marriage or afterwards acquired, and the covenant is therefore deprived of any operation as to the husband, except in respect of any interest which he may take *jure mariti* after the wife's death, in the absence of any disposition by her (as to which, see p. 453, note), or under any disposition *inter vivos* or by will, made by her in his favour; and except so far as he may be liable under ss. 14 and 15 of the Married Women's Property Act, 1882, in respect of the wife's covenant, as an ante-nuptial contract entered into by her, to the extent of any property acquired by him from or through her. The wife's covenant, if not specifically attaching on the property, would create a liability enforceable against her to the extent of her separate property in the same manner as her other ante-nuptial contracts under ss. 13 and 15 of the same Act (and see s. 19). As to the effect of the intended wife being an infant, see note to Precedent V., p. 510.

As to operation of agreement for settlement of wife's after-acquired property.

(f) If it is intended to include property over which the wife has an absolute power of appointment, insert here, "or empowered absolutely to appoint or dispose (otherwise than by will) of"; see as to the insertion of these words, 3 Dav. Prec. p. 214, *et seq.*

also an annuity or annuities or other este or interest for the life of the sd, *wife*, or for any term or period determinable on her death, which it is hby decl'd shall belong to the sd, *wife*, as her separate este independently of the sd husband, and so that she shall not have power to anticipate the same (g)]]), then and as often as the same shall happen (a) the sd, *wife*, and all other necessary pties shall forthwith at the expense of the trust este assure or transfer such real and psonal ppty to the sd trees or tree, their or his hrs, exs, ads, and assigns resply, as the case may require, upon trust that the sd trees or tree shall, with the consent in writing of the sd, *husband*, and, *wife*, or the survivor of them, and after the decease of such survivor at the discretion of the sd trees or tree, (but as to reversionary ppty not until it falls into possession, unless it shall appear to the sd trees or tree that an earlier sale would be beneficial), sell, call in, and convert into money such pt of the sd ppty as shall not consist of money, [or of an annuity or annuities or other este or interest for the life of the sd, *wife*, or for

Exception
as to
powers of
appoint-
ment.

(g) In the ordinary case where the wife takes the first life interest in her own property, the words here bracketed may be inserted in lieu of the words in the subsequent brackets relative to her life interests, otherwise the latter words will be inserted. If it is desired to exclude property over which the wife may acquire a general power of appointment, add here, "and except any ppty which is or shall be subj't to any absolute power of appointment vested in the sd, *wife*, solely or jointly with the sd, *husband*, whether such power shall be exercised or not." See note (f) preceding page.

Short
form.

(a) Where brevity is desired, the following may be substituted for the rest of this form to come in here: "all such real and psonal ppty, except as afsd, shall, at the cost of the trust este, be forthwith assured or transferred to the sd trees or tree, upon trusts as nearly corresponding with the trusts hby decl'd of the sd — hby settled as may be, and so that such real ppty shall be impressed with a trust for conversion into money, and be settled as psonal este." Add proviso for protection of trustees as in full form.

any term or period determinable on her death,] AND SHALL stand possessed of the monies to arise from such sale, calling in, and conversion, and of such pt of the sd ppty as shall consist of money, and of the investmts of such monies resply, and of the income of the same several monies and investmts resply, and of the net income of the sd real and psonal ppty until the sale, conversion, and calling in of the same resply, upon the trusts, and with and subjt to the powers and provons hinbefore decl'd and contd concerning the monies to arise from the sale of the sd sum of £——— Annuities, *or*, “the sale, calling in, and conversion of the sd——— and premes,” hby settled, *or as the case may be, i.e., the wife’s property*, and the investmts representing the same, and the income thof resply, [*where any annual or gross sum is payable or raisable out of the wife’s property, say*, “but not so as to increase the sd annuity or sum of £———”] (b): [AND UPON

(b) If all the property previously settled is the husband’s, and the trusts are in the usual form giving him the first life interest and the ultimate reversion in default of issue, the trust of the wife’s after-acquired property may be declared by reference, as in the text, with the following variations:— Variation referring to trusts of husband’s property.
 “Save and except that the sd, *wife*, shall take the first life interest without power of anticipation in the sd trust premes, the trusts of which are now being decl’d, with remainder to the sd, *husband*, in case he shall survive her, during his life, and that in case there shall be no child of the sd intd marre, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, [with such consent as afsd] then subjt and without prejudice to the trusts and powers hinbefore decl’d and contd, or by law vested in the sd trees or tree, the same trust premes shall be held IN TRUST, &c., *continue trusts of wife’s property*, p. 451, *form xxxv*.”

The trusts are sometimes varied so as to make provision for the wife marrying again. The following are alternative variations for this purpose to be introduced at this point, but it is more usual to provide for this by a separate clause. See the forms LXX. to LXXIII. below. Variation providing for wife’s marrying again.
 “Save only and except that in substitution for the afsd trusts

TRUST that the sd trees or tree shall pay and apply any [such] annuity or annuities or other este or interest for the life of the sd, *wife*, or for any term or period determinable on her death as afsd, to the pson or psons for the pposes and in the mnner to whom for and in which the income of the sd other or future acquired ppty of the sd, *wife*, the trusts whof are lastly hinbefore decld would for the time being be payable or applicable:] PROV'D ALWAYS that the sd trees or tree shall not be accountable or liable in respect of any real or psonal este which may become subj't to the covenant or provon lastly hinbefore contd, unless or until the same shall have been actually assured, paid, or transferred to them or him, nor for omitting to take proceedings to get in the same real or psonal este, or any pt thof.

and powers for the benefit of the child, children, and other issue of the sd intd marre, there shall be corresponding provons for the child, children, and other issue of the sd, *wife*, by her sd now intd, or any subsequent marre," or, "Save only and except that in the event of the sd, *wife*, surviving the sd, *husband*, and marrying again, it shall be lawful for her by any deed or deeds executed in contemplation of such subsequent marre, or by will or codicil, executed after such subsequent marre, to direct that all or any pt of the income of the sd other, or future acquired ppty of the sd, *wife*, hinbefore agrd to be settled, or of the trust premes representing the same, shall be paid to her aftertaken husband, in case he shall survive her, during his life, or any less period, and subj't to any restrictions or condons she may think fit, and by the same, or any other deed or deeds, will or codicil, to appoint and declare any trusts concerning any pt or pts not exceeding in value at the time of such appointmt taking effect one [moiety] of the capital of such last mentd ppty and premes in favour of the child, children, or issue of such future marre."

LXX. PROVD ALWAYS, and it is hby agrd that [if there shall be not more than — children of the sd intd marre, who, being sons or a son, shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age or marry [with such consent as afsd]], it shall be lawful for the survor of them, the sd, *husband*, and, *wife*, at any time or times after the death of the other of them, and either in contemplation of or after any future marre of such survor, by any deed or deeds, revocable or irrevocable, or by will or codicil, to direct or appoint that one moiety [such portion or share as is hinafter mentd], or any less pt of the trust funds and ppty hinbefore settled on the pt of such survor [inclusive, in the case of the sd, *wife*, of any ppty becoming settled by virtue of the agreemt hinbefore contd for the settlemt of her other or future acquired ppty], shall from and after the decease of the sd survor be withdrawn wholly or partially, as the case may be, from the operation of this present settlemt, and be held upon such trusts as shall be decld by such appointmt for the benefit of the after-taken husband or wife of such survor, and the issue, whether children or more remote, of such survor by any such after-taken husband or wife, such issue to be born and take vested interests within twenty-one years after the death of such survor [but so that such after-taken husband or wife shall not take any interest exceeding a life interest], and also to appoint and direct that the portion or share of the sd trust funds and premes so settled as last afsd shall either remain vested in the trees or tree of this present settlemt or shall in case and when and so far as circes may admit be transferred to any other psons or pson as trees or tree for the ppose of such future settlemt, and in the latter case to make such provon respecting the appointmt of new trees as may be thought proper. [PROVD ALWAYS, and it is hby agrd that the portion or share of the sd trust funds and ppty to be withdrawn from this present settlemt and appointed under the power lastly hinbefore contd shall not exceed the proportion thof [the value] hinafter mentioned,

Power to survivor of husband and wife to settle a moiety of his or her property on a future marriage.

Variations where the amount to be settled depends on the number of children of the present marriage.

that is to say, if there shall be three or more children of the now intd marre, who, being sons or a son, shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry [with such consent as afsd], one equal fourth part thof [the sum of £——], and if there shall be only two such children one equal third pt thof [the sum of £——], and if there shall be only one such child a moiety thof [the sum of £——]]: PROVD ALWAYS and it is hby agrd that the power hinbefore contd of withdrawing part of the sd trust funds and ppty from this present settlement and any appointmt made in psuance thof shall not prejudice the power of advancement hinbefore contd in favour of any child of the sd now intd marre, which may be exercised without regard to the possibility of the share of such child becoming ultimately diminished by reason of any appointmt made or to be made under such power of withdrawal: PROVD ALSO and it is hby agrd that any such appointmt as last afsd may be made while it shall be uncertain whether [or to what extent] the same will be capable of taking effect: PROVD ALSO that subjt and without prejudice to any such appointmt as last afsd, the trust premes of which any such appointmt shall be made shall remain and be held upon such of the trusts, and with and subjt to such of the powers and provons hinbefore decl'd and contd of and concerning the same as shall be subsisting and capable of taking effect.

Power to
wife to
appoint
part of
trust funds
on a second
marriage
(c).

LXXI. PROVD ALWAYS, and it is hby agrd that if the sd, *wife*, shall survive the sd, *husband*, and marry again, then and in such case it shall be lawful for her, either before or after any such subsequent marre, by any deed or deeds, revocable or irrevocable, or by will or codicil, to appoint that

(c) Where more than one of the forms, LXX., LXXI., LXXII., and LXXIII., are used, insert the following proviso, "PROVD ALWAYS, and it is hby agrd, that if by the effect of any appointmts made under more than one of the powers hinbefore contd for enabling the sd, *wife*, [the survivor of them the sd, *husband*

any pt of the trust funds and ppty hby settled on her pt [inclusive of any ppty becoming settled by virtue of the agreemt hinbefore contd for the settlemt of her other and future acquired ppty] not bearing a greater proportion to the residue of the same trust funds and ppty, than the number of children of any subsequent marre of the sd, *wife*, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry [with the consent of her or their parents or parent or guardians or guardian], shall bear to the number of children of the now intd marre, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry [with the like consent], shall from and after the decease of the sd, *wife*, either remain vested in the sd trees or tree or be transferred to any other psons or pson in trust as to all or any pt of the income thof for the after-taken husband of the sd, *wife*, in case he shall survive her during his life, or any less period, and subjt to any condons or restrictions which she may think fit, and, subjt to the interest (if any) so given to such after-taken husband, in trust for all or any of the children or remoter issue of the sd, *wife*, by any such subsequent marre, such remoter issue to be born, and take vested interests in the lifetime of the sd, *wife*, or within twenty-one years after her decease, at

and, *wife*,] to withdraw pt of the sd trust premes from this present settlemt, or to make appointmts in favour of a future husband [or wife] or the issue of a future marre, more than [one moiety] of the capital or income of the trust funds or premes hby settled on the pt of the sd, *wife*, [such survivor] [inclusive of any ppty becoming settled by virtue of the agreemt hinbefore contd for the settlemt of the other and after acquired ppty of the sd, *wife*], would but for this present proviso become vested in or payable to any pson or psons other than the issue of the sd intd marre, the appointmts so made shall be void for such excess, and shall as between themselves have priority according to their respive dates."

such ages or times, age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marre [with such consent as afsd]), in such shares if more than one, and in such mner as she, the sd, *wife*, shall by such appointmt direct, *Add the three provisoes at the end of the last form.*

General
power to
wife to
withdraw
part of
funds from
settlement,
if no child
or only
one (d).

LXXII. PROVD ALWAYS, and it is hby agrd, that in case the sd, *wife*, shall survive the sd, *husband*, and there shall be not more than one child of the sd intd marre, or not more than one such child who shall attain a vested interest in the sd trust premes under the trusts hinbefore decld, it shall be lawful for the sd, *wife*, at any time after the decease of the sd, *husband*, but subj and without prejudice to any irrevocable appointmt made under the power [either of the powers] hinbefore contd of making appointmts in favour of the issue of the sd intd marre, by any deed or deeds, revocable or irrevocable, or by will or codicil, to appoint any pt of the sd trust funds and ppty hby settled on her pt [inclusive of any ppty becoming settled by virtue of the agreemt hinbefore contd for the settlemt of her other and future acquired ppty], not exceeding [one moiety] thof, to be transferred to any pson or psons whomsoever, and in such mner, and in trust for such pson or psons, and for such pposes in all respects as the sd, *wife*, shall think fit: (e) *Add the three provisoes at the end of form LXX.*

Power to
a woman
to appoint
life interest
to sur-
viving
husband
(f).

LXXIII. PROVD ALWAYS, and it is hby agrd, that notwithstanding anything hinbefore contd, it shall be lawful for the sd, *wife*, [by any deed executed prior to, and in contemplation of any marre, or] by will or codicil, to appoint unto or for the benefit of any husband who may survive her (g), an interest for the life of such husband, or any less interest in

(d) See p. 482, note.

(e) This may be varied according to the number of children, as in form LXX.

(f) See p. 482, note.

(g) In exercising such a power as this regard should be had to *Bullmore v. Wynter*, 22 Ch. D. 619.

the sd trust funds and ppty hby settled on her pt [inclusive of any ppty becoming settled by virtue of the agreemt hinbefore contd for the settlemt of her other and future acquired ppty], or in any pt thof, to commence from the decease of the sd, *wife*, and subjt to such condons and restrictions as she may think fit, and that in the event of any such appointmt being made, the interest in the sd trust premes which shall be so appointed unto or for the benefit of such surviving husband, shall take effect in precedence of and priority over the trusts and provons hinbefore decl'd and contd of and concerning the sd trust premes after the decease of the sd, *wife*.

LXXIV. PROVD ALWAYS, and it is hby agrd, that in case any preferential right to take or subscribe for any new or other shares or stock in any railway or other co shall be offered to the sd trees or tree, as holding any shares or stock in such co for the time being subjt to the trusts of these presents, it shall be lawful for the sd trees or tree, in their or his discretion, to renounce or relinquish the benefit of such preferential right either absolutely, or in favour of the pson for the time being entled to the income of the sd trust premes, to the intent that such pson may have the benefit thof, or otherwise to subscribe for such new or other shares or stock, or any pt thof, and to dispose of, or transfer the same, or the title thto, and every premium or profit arising thfrom shall be held and applied by the sd trees or tree as if the same were income arising from the sd trust premes.

LXXV. PROVD ALWAYS, and it is hby agrd that the sd trees or tree shall with all convenient speed raise by the sale of a sufficient pt of the sd —, and pay [the costs of the marre

Power to trustees to relinquish preferential right to take stock in favour of tenant for life.

Provision for raising costs of settlement, &c. (a).

(a) Unless otherwise arranged, the costs of the settlement are according to usage payable by the husband, whether the wife is of age or an infant (see *Helps v. Clayton*, 17 C. B. N. S. 553). It has been doubted whether the husband's liability may not be altered by the provisions of the Married Women's Property Act, 1882, s. 14, as to his liability for the wife's antenuptial debts; as to the wife's liability, see s. 13. If any question is likely to arise or it is desired to relieve the husband, the insertion of the above clause may be expedient.

Costs of settlement.

outfit of the sd, *wife*, and the expenses connected thwith, and] the costs and expenses of the negotiation, preparation, and execution by all pties of these presents [and of the indre of even date herewith, and the deed poll, bearing date the day before the date hereof, hinbefore resply recited or referred to].

Clause
putting
infant wife
to her elec-
tion to con-
firm settle-
ment (b).

LXXVI. PROVD ALWAYS and it is hby agrd [and the sd, *husband*, doth hby covenant with the sd, *trustees*, their exs, ads, and assigns] that the sd, *wife*, shall upon attaining the age of twenty-one years, or at any time thereafter upon the request in writing of the sd trees or tree, or any person interested in the sd trust premes, execute and do, at the expense of the trust este, all such deeds, instrumts, acts, and things as may be necessary or proper for effectually confirming the settlemt intd to be hby made, and vesting in or transferring to the sd trees or tree the sd — and premes intd to be hby settled, and all other ppty intd to be hby settled by the sd, *wife*, which would be bound by the agreemts and provons hinbefore contd if the sd, *wife*, had now attained the age of twenty-one years, and in the event of the refusal or neglect of the sd, *wife*, so to do upon such request as afsd, she shall thenceforth be deprived of all benefit hereunder, and the income and capital of the sd trust premes hby settled or agrd to be settled by the sd, *husband*, [and, *father of husband or wife, or as the case may be*] shall be held upon the trusts and for the pposes upon and for which the same would for the time being be held if the sd, *wife*, were then dead [without having exercised any general power of appointmt over any of the trust premes hby settled or agrd to be settled as last afsd hinbefore given to her the sd, *wife*].

Power for
trustees to
apportion
blended
trust
funds, &c.

LXXVII. PROVD ALWAYS, and it is hby agrd that it shall be lawful for the sd trees or tree to determine whether any money shall for the pposes of these presents be considered

(b) See note to Prec. V., p. 510. This clause must of course be adapted to the provisions of the particular settlement. See also a form of covenant by the husband that the wife shall make a settlement on attaining twenty-one, p. 510, note.

as capital or income, and out of what pt of the sd trust premes any expenses or outgoings shall or ought to be borne, and also to apportion as they or he shall think fit any funds subj to different trusts which may have become blended: AND TO determine all questions and matters of ^{To determine questions.} doubt arising in the execution of the trusts of these presents, and that every such determination, whether made upon a question actually raised or implied in the acts and proceedings of the sd trees or tree, shall be conclusive, and bind all psons interested under these presents: [AND THE SD trees ^{To compromise, settle accounts, &c.} or tree shall also have full power to settle all accounts and to compromise, compound, abandon, or refer to arbitration, any actions, proceedings, disputes, claims, demands, and things relating to the trust premes, and to accept any secy real or personal for any debts or any ppty claimed, and to execute and enter into releases, agreemts, and other instrumts, and to do all other things proper for any such ppose, without being responsible for loss occasioned thby (c)].

LXXVIII. PROVD ALWAYS, and it is hby agrd that the sd ^{Special power to trustees to settle accounts, &c., as to reversionary interest (d).} trees or tree shall have full powers of settling and approving all accounts, and executing and doing all releases and things relating to the trust premes as fully and effectually as if they or he were absolute owners or owner and so as effectually and completely to discharge and exonerate all accountable pties from all liability in respect of any matters coming within the scope of any such release: AND THE SD trees or tree may agree or ascertain the share (original and accruing) and premes hinbefore assigned, or any pt or pts thof at such amount or value as they or he shall think fit, and may accept in or towards satisfon thof at the market or current

(c) The Conv. Act, 1881, s. 37, gives to two or more trustees acting together, or a sole acting trustee where a sole trustee is authorised to execute the trusts, large powers (unless a contrary intention is expressed or indicated), similar to those in this bracket, which might therefore be omitted.

(d) This clause would sometimes be useful in a settlement of a reversion; and its provisions are only partially covered by the statutory provisions referred to in the last note,

value, or upon any valuation or estimate of value which they or he shall think fit, any stocks, funds, shares, or secs of the description hinfere authorised to be taken as investmts, and may allow any deductions for duty, expenses, or on any other account whatsoever which may be deemed proper or reasble (whether the allowance thof can be legally required or claimed or not): AND further that the sd trees or tree shall not be under any obligation to require the calling in or re-investmt of any portion of the premes held upon the trusts of the sd settlemnt of, &c., or of the sd will of the sd X. resply, which is not or shall not be in an authorised state of investmt according to the trusts applicable thto resply, unless requested so to do in writing by the sd, *husband*, and, *wife*, or the survor of them, and shall not be liable for any loss which may be incurred by the omission so to do, it being hby decl'd that in order to obviate any question in this respect the sd, *husband*, and, *wife*, hby expressly approve of and adopt the present mode of investmt of the sd premes held upon the trusts of the same settlemnt and will resply as specified in the sd schedule to these presents (e).

Trustees'
receipt
clause (f).

LXXIX. PROVD ALWAYS, and it is hby agrd that the rect of the sd trees or tree for the pchase-monies of any ppty hby

(e) A stipulation of this kind for condoning breaches of trust might possibly under some circumstances not be upheld; see *Hamilton v. Mohun*, 1 P. W. 118.

As to the
trustee
clauses.

(f) The Receipt Clause, the Power to Appoint New Trustees, and the Trustees' Indemnity and Reimbursement Clauses may now be usually omitted in reliance on recent enactments; see as to the Receipt Clause, the Conv. Act, 1881, s. 36 (re-enacting in an improved form the repealed enactment, 23 & 24 Vict. c. 145, s. 29, and practically superseding, as to trustees, 22 & 23 Vict. c. 35, s. 23), which makes the receipt of any trustees or trustee a sufficient discharge for any money, securities (including stocks, funds, and shares, see s. 2), or other personal property or effects payable, transferable, or deliverable to them or him under any trust or power; as to the Power to Appoint New Trustees, the Conv. Act, 1881, ss. 31, 32, and 34 (substituted for the repealed enactment, 23 & 24 Vict. c. 145, s. 27; see *infra*, p. 490, note); and as to the Indemnity and Reimbursement Clauses, 22 & 23 Vict. c. 35, s. 31 (as to which, see 3 Dav. Prec., p. 246). But a short clause or clauses modifying or supplementing the statutory provisions will generally be required, see pp. 489, 491, forms LXXXI. and LXXXIV. It may occasionally be proper to insert the full clauses when the

directed or authorised to be sold, or for any other monies, stocks, funds, shares, secs, or investmts, paid, delivered, or transferred to them or him by virtue of these presents, or in the execution of the trusts or powers hereof, shall effectually discharge the pson or psons paying, delivering, or transferring the same therefrom, and from being bound to see to the application, or being answerable for the loss or misapplication thof.

LXXX. PROVD ALWAYS, and it is hby agrd that if, and so often as, the sd trees hby constituted, or any of them, or any tree or trees appointed under this present power, or by a court having jurisdiction in that behalf, shall die [or remain out of the United Kingdom for more than twelve calendar months], or desire to be discharged, or refuse or become unfit or incapable to act in the trusts of these presents, it shall be lawful for the sd, *husband*, and, *wife*, or the survor of them, and after the death of such survor for the surviving or continuing trees or tree for the time being (and for this ppose any retiring or refusing tree shall, if willing to act in the exercise of this power, be considered a continuing tree), or for the psonal representatives or representative, of the last surviving or continuing tree, to appoint a new tree or trees in the place of the tree or trees so dying [or remaining out of the United Kingdom] or desiring to be discharged, or refusing or becoming unfit or incapable to act as afsd : And upon every such appointmt the number of trees may be increased or diminished, but not to less than two, and upon every such appointmt the trust ppty shall, as soon as circes will admit, be transferred to or vested in the trees or tree for the time being, but every new tree may, as well before as after the trust ppty shall have been so transferred, or vested, execute all the trusts and powers of these presents in the same mner as if he had been hby constituted a tree.

Power to
appoint
new trus-
tees (g).

trust property is situate abroad, where there may be no enactments corresponding to those above referred to.

(g) See last page, note (f), and next page, note (a).

Clause
supple-
mental to
the statu-
tory power
of appoint-
ing new
trustees
(a).

Statutory
power of
appointing
new trust-
tees.

LXXXI. PROVD ALWAYS, and it is hby agrd that the statu-
tory power of appointing new trustees of these presents shall
be vested in the sd, *husband*, and, *wife*, during their joint
lives, and the survivor of them during his or her life (b).

(a) The power in the Conv. Act, 1881, s. 31, provides for the case of a trustee dying, remaining out of the kingdom for twelve months (which was not provided for by the repealed clause, 23 & 24 Vict. c. 145, s. 27), desiring to be discharged, refusing or becoming unfit or incapable; and the power is given to the person or persons nominated for the purpose by the settlement, or if there is no such person, or no such person able and willing to act, then to the surviving or continuing trustees or trustee or the personal representatives of the last surviving or continuing trustee (which includes a refusing or retiring trustee if willing to act, sub-s. 6). Power is given by sub-ss. 2 & 3 to increase or reduce the number, but not in general to less than two. The Act also by s. 32 enables a trustee with the consent of his co-trustees and such other person, if any, as is empowered to appoint trustees, to be discharged without any new trustee being appointed in his place; and by s. 34, enables the trust estate (with certain exceptions) to be vested on an appointment of new trustees by the declaration of the appointor without a conveyance. The Conv. Act, 1882, s. 5, gives power, on an appointment of new trustees, to appoint separate sets of trustees for different parts of the property held on distinct trusts; a useful power under wills, but not often required under settlements.

Variations.

(b) This is the usual power in personal settlements, but it is sometimes vested in "the person or persons in whom the sd power is vested by the statute in that behalf with the consent of the sd, *husband*, and, *wife*, during their joint lives and of the survivor of them during his or her life, and after the decease of such survivor at their or his discretion," or in "the sd A. during his life and after his death in the person, if of full age, for the time being entitled to the income of the sd trust premises hereby settled, and in case there shall be no such person, then in the person or persons in whom the sd power is vested by the statute in that behalf."

The following is occasionally added:—"PROVD ALWAYS and it is the express intention of the parties hereto that whenever a vacancy shall happen in the number of the trustees of these presents by death or any other means a new trustee or new trustees shall be forthwith appointed to fill such vacancy so that the number of the acting trustees shall never be less than three."

LXXXII. AND IT IS HBY AGRD that the statutory power of appointing a new tree or trees in the place of the sd M., or of any tree or trees succeeding mediately or immediately to his place shall be vested in the sd A. during his life, and that the statutory power of appointing a new tree or trees in the place of the sd N., or of any tree or trees succeeding mediately or immediately to his place, shall be vested in the sd B. during his life.

The same, where each settlor is to supply the place of the trustee nominated by him.

LXXXIII. PROVD ALWAYS, and it is hby agrd that the trees for the time being of these presents shall be resply chargeable only for such monies and secs as they shall resply actually receive, notwithstanding their resply signing any rect for the sake of conformity, and shall resply be answerable and responsible only for their own respive acts, rects, omissions, neglects, and defaults, and not for those of each other, nor for any banker, broker, auctioneer, or other pson with whom or into whose hands any trust monies or secs shall be deposited or come, nor for dispensing wholly or partially with the investigation or production of the lessor's title [on the pchase (d) or] on lending money on the secy of leasehds, nor for otherwise [pchasing or] lending on the secy of hereds with less than a marketable title, nor for the insufficiency in title or deficiency in value of any investmts, nor for any other loss, unless the same shall happen through their own wilful default resply: And also that the sd trees or tree for the time being may reimburse themselves or himself, or pay and discharge out of the trust premes all expenses incurred in or about the execution of the trusts or powers of these presents [or of the sd indre of even date herewith].

Trustees' indemnity and reimbursement clauses (c).

LXXXIV. AND IT IS HBY FURTHER AGRD that in addition to the ordinary indemnity given by law to trees, the sd trees or tree may dispense wholly or partially with the investigation or production of the lessor's title [on the pchase (d) or]

Clause supplemental to statutory provisions as to indemnity of trustees (c).

(c) See above, p. 488, note (f).

(d) In the case of the *purchase* of leaseholds, this is provided for by the

on lending money on the seey of leasehds, and may otherwise [pchase or] lend on the seey of any hereds with less than a marketable title, without being liable for any loss occasioned thby.

Power to trustees, being solicitors or professional men, to charge for business done (g).

LXXXV. AND IT IS HBY AGRD that every tree under these presents [and the sd indre of even date herewith] being a solor [or engaged in any other profession or business], shall be entled to make and receive all such charges and emolumts for business [whether of an ordinary or strictly professional character or not (h)] done by him or his firm in relation to the execution of the trusts of these presents [and the sd indre of even date herewith], as he would have been entled to make and receive in respect of such business if he had not been a tree.

Power of revocation of settlement, with variations (a).

LXXXVI. PROVD ALWAYS, and it is hby agrd and decl'd that it shall be lawful for the sd, *settlor*, at any time or times hereafter, [with the consent in writing of the sd trees or tree, which consent they or he shall have an absolute discretion to give or withhold, without incurring any responsibility in that behalf,] by any deed or deeds revocable or irrevocable, or by will or codicil expressly referring to this power (b), wholly or partially to revoke the [uses (c)] trusts,

Vendor and Purchaser Act, 1874, s. 2; and in the case of the purchase of an underlease by the Conv. Act, 1881, s. 3 (1); but it is of course proper to express it in this case.

(g) As to this clause, see 3 Dav. Prec., 792, note. The following may be added if desired:—"And further that he may agree with the other trees or tree for the time being to receive and be paid in respect of all or any parlar pt of such business, in lieu of the ordinary professional charges, a salary of such amount and during such period as may be agrd upon."

(h) These words are inserted to meet *Harbin v. Darby*, 28 Beav. 325.

(a) See note to Prec. xv., p. 533.

(b) These words are desirable, although a will containing a general devise and bequest not referring to the power would not operate as an execution of such a power. See 3 Dav. Prec., 698.

(c) The words bracketed will be appropriate in the case of real estate, although settled by means of a trust for sale.

powers, and provons herein decl'd and cont'd of and concerning the — and premes hby settled and the [rents, profits, and (c)] income thof, and to declare such new or other [uses and (c)] trusts of and concerning the same, or any pt or pts thof as he may think fit for the benefit of himself the sd, *settlor*, his [hrs (c)] exs or ads, or any other pson or psons, or, “for the benefit of all or any to the exclusion of the other or others of the following psons, namely, the present or any future wife of the sd, *settlor*, or his children or more remote issue by his present or any future wife, or his collateral relations, but not in favour of any other pson or psons.”

LXXXVII. PROVID ALWAYS and it is hby agrd that all the trusts, powers, and authorities hinbefore given to or vested in the sd, *trustees*, whether by name or otherwise, shall devolve upon and be exerciseable by the survivors and survivor of them [and the exs or ads of such survivor], and the trees or tree for the time being of these presents.

Declaration
as to
powers of
trustees
(d).

LXXXVIII. AND IT IS HBY AGRD that a sole tree for the time being of these presents shall be competent to act for all the pposes of the Settled Land Act, 1882, including the rect of capital money and notices thereunder.

Provision
as to sole
trustee
under
Settled
Land Act,
1882 (c).

(c) See note (c) preceding page.

(d) By the Conv. Act, 1881, s. 38, a power or trust given to or vested in two or more trustees jointly is to survive unless the contrary is expressed (see as to this before the Act, Sug. Pow., 8th ed., 128; Lewin on Trusts, 7th ed., 528); so that the clause in the text, which was sometimes inserted to prevent doubt, and to avoid repeating the words “and the survivors and survivor of them,” all through the deed, can now seldom be required, especially in personalty settlements; but it is retained for use if desired. The clause is adapted to real as well as personal estate, even though the legal estate is in the trustees; see p. 462, note (h). The Conv. Act, 1882, s. 6, enables a trustee to disclaim a power whether annexed to an estate or not, so that it shall be exerciseable by the other trustees or trustee; see as to this before the Act, Sug. Pow., 8th ed. 50.

As to sur-
vivorship
and dis-
claimer of
powers of
trustees.

(e) See the Act, ss. 39, 45 (2). This clause should be inserted in a settlement of land in trust for sale, or containing a power to purchase land, or in the conveyance in trust for sale when contained in a separate deed.

PRECEDENTS.

I.

PREC. I.

SETTLEMENT, *on Marriage (a), of RAILWAY SHARES belonging to HUSBAND, and CONSOLS and BONDS (PASSING by DELIVERY) of a Foreign Government belonging to WIFE, EACH taking the FIRST LIFE INTEREST in his or her OWN PROPERTY. AGREEMENT for SETTLEMENT of Wife's AFTER-ACQUIRED*

As to the validity of marriage settlements against creditors.

(a) As to the protection afforded by the marriage consideration to settlements as against creditors, and that such a settlement is not in general impeachable unless the marriage itself is part of a scheme for defrauding creditors, see 3 Dav. Prec. p. 688 *et seq.*, and see *Kewan v. Crauford*, 6 Ch. D. 29. But a settlement by a trader of his future property is liable to be impeached in case of bankruptcy under the 91st section of the Bankruptcy Act, 1869; (see on the construction of this enactment, *Ex p. Bolland*, L. R. 17 Eq. 115; *Ex p. Bishop*, L. R. 8 Ch. Ap. 718; *Re Andrews*, 7 Ch. D. 635); and this is extended to female traders by the effect of the Married Women's Property Act, 1882, s. 19, which invalidates a settlement of a woman's property against creditors under the same circumstances as a settlement by a man would be invalid, coupled with s. 1 (5) making a married woman carrying on a separate trade subject to the bankruptcy laws.

As to limitations in favour of collaterals.

That limitations in favour of collaterals are not primarily within the marriage consideration, although they may be brought within it by special contract, see 3 Dav. Prec. 670; Dart. V. & P. 894. As to whether the issue of either party by a former or subsequent marriage are within the consideration, the decisions are conflicting; see 3 Dav. Prec. 670; *Price v. Jenkins*, 4 Ch. D. 483, 5 Ch. D. 619; *Gale v. Gale*, 6 Ch. D. 144.

Wife's equity to a settlement, &c.

The equitable doctrines as to antenuptial gifts or settlements by the wife in fraud of the husband's marital rights (as to which, see 1 Lead. Cas. Eq. notes to *Strathmore v. Bowes*), and as to a married woman's equity to a settlement (as to which, see 1 Lead. Cas. Eq., notes to *Murray v. Lord Eltham*), appear to be entirely put an end to by the late Married Women's Property Act, as to persons married since 1882.

As to various points arising on personalty settlements, see the notes to the clauses, above.

Property. VARIATIONS where RECITALS are PREC. I.
OMITTED (b).

PARTIES, A., husband, 1; B., wife, 2; C., D., and E., trustees, 3. Recite intended marriage, p. 421; Agreement for settlement and transfer of the railway shares belonging to A. (giving the particulars if convenient in first schedule) p. 425, form IX.; or, if preferred, p. 422, form, II., and p. 426, form XI.; [Statement of value for stamp duty, p. 426]: AND WHAS psuant to a further agreemt made upon the treaty for the sd intd marre, the sum of £—— Consolidated £3 per cent. Annuities and —— bonds of the —— Government for £—— sterling each, or, “the annuities and bonds, the parlars whof are specified in the second schedule hto,” belonging to the sd B.; have been respdy transferred into the names of and delivered to the sd C., D., and E., to the intent that the same shall be held in trust, for B. till marriage, &c., as at p. 422, form II. [or, if preferred, recite agree-

Recitals. Marriage. Agreement for settlement. Transfer of stock, &c.

(b) This Precedent may be readily used for the simpler case of a settlement of stocks and shares belonging to one of the parties only.

The following are the variations where recitals are dispensed with, the witnessing part may commence:—“WITNETH that in psuance of an agreemt entered into upon the treaty for and in conson of a marre which is intd shortly to be solemnized between the sd A. and B. it is hby agrd and decld that the sd C. D. and E., their exs, ads, and assigns shall stand possessed of the railway shares specified in the first schedule hto belonging to the sd A., which have been transferred by him into the names of the sd C., D., and E., in trust for the sd A. until the sd intd marre, and shall stand possessed of the annuities and bonds specified in the second schedule hto belonging to the sd B. which have been respively transferred into the names of or delivered to the sd C. D., and E. in trust for the sd. B. until the sd intd marre, and shall stand possessed of all the sd shares, annuities, and bonds, specified in the first and second schedules hto, after the sd marre upon trust, &c., for investment, &c.” The rest of the deed will be as in the text.

Variations where recitals are omitted.

PRSEC. I. *ment as at p. 422, form II., and transfer as at p. 426, form XI.]; Agreement for settlement of B.'s after-acquired property, p. 428: NOW THIS INDRE WITNETH that, in*

Witnesseth. *psuance of the sd agreemt and in conson of the sd intd marre, it is hby agrd and decl'd that the sd C., D., and E., their exs, ads, and assigns, shall, after the sd intd marre, stand possessed of the sd shares, annuities, and bonds hinbefore recited to have been transferred and delivered*

Declaration of trusts. *resply to them the sd C., D., and E., UPON TRUST that they the sd C., D., and E., &c., continue trust for invest-*

Investment. *ment, see pp. 438—437, forms III., IV., V., and VI.: AND*

Income. *SHALL DURING the joint lives of the said A. and B., pay the income of the sd railway shares and the investmts representing the same to the sd A. and his assigns, and shall pay the income of the sd Annuities and bonds, and the investmts representing the same resply, to the sd*

Capital. *B., &c., as at p. 440, form XII.; Trust to pay income, "of all the sd trust premes," to the survivor for life, p. 440, form XVI. AND AFTER the death of the survor of them, the sd A. and B., shall stand possessed of all the sd trust premes and the income thof IN TRUST, for children or remoter issue of marriage as A. and B. or survivor appoint, p. 445, form XXV., or p. 446, form XXVI., in default of appointment for children of marriage at twenty-one, &c., p. 447, form XXVIII.; Hotchpot clause, p. 448; Advancement, p. 448; [Maintenance, p. 449, and Accumulation, p. 451, unless omitted in reliance on the statute (c);] Ultimate trust of*

(c) The following clause extending the advancement, &c., clauses to appointed shares may be added, if thought proper; see p. 446, note.

Provision extending advancement, &c., clauses to appointed shares. "AND it is hby agrd that the powers and provons hinbefore contd for the advancemt [and maintenance] of the children of the sd intd marre [and the accumulation of surplus income] shall (unless otherwise provd in and subj't to the provons of the appointmt) apply to any share or shares appointed to any child or grandchild of the sd intd marre under either of the provons hinbefore contd in that behalf."

A.'s and B.'s fortunes, p. 451, with variation in note; *Agreement for settlement of other and after-acquired property of wife*, p. 477, form LXIX. (d): *Power to trustees to apportion trust funds and determine questions*, p. 486; *Clauses supplemental to statutory provisions as to appointment and indemnity of trustees*, p. 490, form LXXXI., and p. 491, form LXXXIV. *If either of the trustees is a solicitor or professional man, add, Power to charge for business done*, p. 492, form LXXXV.

IN WITNESS, &c.

[Two Schedules.]

II.

SETTLEMENT, on Marriage, of POLICY of ASSURANCE effected on LIFE of HUSBAND in his OWN NAME. VARIATIONS, where it is effected in the NAMES of the TRUSTEES, and for SEVERAL POLICIES (a).

(d) Add here, if desired, a power to either party to make a settlement on a future marriage, see pp. 481—484. This may be especially important in the case of the wife where the settlement comprises all her present and future property acquired during the coverture.

(a) Recitals might be dispensed with; see note (b), p. 495. As to the stamp on the settlement of a policy, see the Stamp Act, 1870, s. 124.

The Married Women's Property Act, 1882, s. 11 (re-enacting in a modified form a similar provision in the Married Women's Property Act, 1870, s. 10) enables a man or woman to effect a policy on his or her life for the benefit of his or her wife or husband and children, or any of them, as expressed in the policy, so as to operate as a settlement thereof, and makes provision for the appointment of trustees; and in default of any such appointment of a trustee, the policy is to vest in the insured, and his or her personal representatives in trust for the purposes expressed; and the receipt of the trustees or the personal representative, as the case may be, is to be a discharge to the office. See as to various points arising on the Act, Wolstenholme and Turner on the Act, p. 155; and as to the validity of such policies against the creditors of the husband when a trader, *Holt v. Everall*, 2 Ch. D. 266, decided on the Act of 1870. Probably settlement policies under the Act will not be at present extensively used, as the saving of expense (although the policy is not chargeable with *ad valorem* stamp duty as a settlement) would not usually be sufficient to compensate for the possible inconveniences attending their use.

PRE2. II.	<i>PARTIES, A., husband, 1; B., wife, 2; C., D., and E.,</i>
Recitals.	<i>trustees, 3. Recite intended marriage, p. 421; Title to and</i>
	<i>agreement for settlement of policy or policies, p. 426, form XIII.,</i>
Wit- nesseth.	<i>or p. 427, form XIV.: NOW THIS INDRE WITNETH</i>
	<i>that in psuance of the sd agreemt and in conson of the sd</i>
Assign- ment of policy.	<i>intd marre, [(b) assignment by A., "as settlor," with appro-</i>
	<i>bation of B., of policy or policies to C., D., and E., in trust</i>
	<i>for A. till the marriage, &c., p. 429, form I., and p. 431, note :</i>
Trusts of policy monies.	<i>AND] IT IS HBY AGRD AND DECLD that, in case the sd intd</i>
	<i>marre shall take place, the sd C., D., and E., or the survors</i>
	<i>or survivor of them, or the exs or ads of such survivor, or</i>
	<i>other the trees or tree for the time being of these presents</i>
	<i>(hinafter called the sd trees or tree) shall, upon the death of</i>
	<i>the sd A., receive all the monies assured by or to become</i>
Invest- ment.	<i>payable under the sd policy [respive policies]: AND SHALL,</i>
	<i>with the consent in writing of the sd B. during her lifetime,</i>
	<i>and after her death at the discretion of the sd trees or tree,</i>
	<i>invest the same in the names or name [or under the legal</i>
	<i>control] of the sd trees or tree in or upon, &c., Investments,</i>
Income.	<i>see pp. 435—437, forms IV. to VI.: AND SHALL pay the</i>
	<i>income of the sd policy monies or the investmts representing</i>
	<i>the same to the sd B. or her assigns during her life, but so</i>
	<i>that during the sd intd coverture she shall not have power to</i>
	<i>dispose of or charge such life interest by way of anticipation.</i>
Trusts after death of husband and wife.	<i>AND AFTER the death of the sd B. shall stand possessed of</i>
	<i>the sd policy monies, investmts and premes, and the income</i>
	<i>thof, IN TRUST, for issue of marriage as A. and B. or survivor</i>
	<i>appoint, p. 445, form XXV., or p. 446, form XXVI., in default</i>
	<i>of appointment for children equally at twenty-one, &c., p. 447,</i>
	<i>form XXVIII.; Hotchpot clause, p. 448; Advancement, p. 448;</i>
	<i>[Maintenance, p. 449; and Accumulation, p. 451, unless omitted</i>
	<i>in reliance on the statute;] Ultimate trust of, "the sd trust</i>
	<i>premes," for A., p. 451; Covenant by A. to keep up policy,</i>
Power to trustees to borrow money to keep up policy.	<i>p. 454: [PROVD ALWAYS and it is hby agrd and decl'd</i>
	<i>that it shall be lawful for the sd trees or tree to borrow</i>

(b) If the policy is effected in the trustees' names the part in brackets will, of course, be omitted.

from any pson interested in the sd trust premes, or from any other pson or psons, the amount required for paymt of the annual premiums or other sums necessary for keeping on foot or restoring the sd policy [respive policies] or any such substituted policy as afsd, or for effecting any such substituted policy, at interest on the secy of the sd policy or policies, and to apply the amount so borrowed accordingly;] *Option of applying bonuses in diminution of premiums*, p. 455 : *Power to surrender policy, and trust to accumulate proceeds*, p. 456 : *Proviso protecting trustees in case of lapse of policy*, p. 457 : *Clauses supplemental to statutory provisions as to appointment and indemnity of trustees*, p. 490, form LXXXI., and p. 491, form LXXXIV.

PREC. II.

IN WITNESS, &c. (c).

III.

TRANSFER of MORTGAGE of FREEHOLDS to TRUSTEES of Marriage SETTLEMENT of even date (a).

PREC. III.

PARTIES, A., wife, 1; B., husband, 2; C., D., and E., trustees, 3. *Recite mortgage to A. and state of mortgage debt* *Recitals*.

(c) Notice of the settlement must be given to the office, if the policy is effected in the husband's name, pursuant to The Policies of Assurance Act, 1867, 30 & 31 Vict. c. 144.

(a) The transfer is made by a separate deed, in order that the settlement may not become part of the title to the mortgaged estate, in a manner similar to that in which land conveyed in trust for sale, or a portion charged on land, is settled (see the next Precedent, and Precedents VII., VIII., X., *infra*). And with the same object of keeping the settlement off the title to the land, upon new trustees being appointed, separate appointments are made for the settlement and the transfer or conveyance of even date (see Vol. I., *APPOINTMENTS OF NEW TRUSTEES*, pp. 118, 120). The transfer of mortgage to the trustees in the text differs from a mortgage taken by trustees on an investment made after the settlement, or where a mortgage so taken is afterwards transferred on an appointment of new trustees, as the transfer in the

As to settlement of mortgage debt.

PREC. III. *as at p. 216; Intended marriage, p. 421: AND WHAS upon*
 Agreement for trans- the treaty for the sd intd marre it was agrd that the sd
 fer. mtge debt of £—— and interest, and the secs for the same,
 should be transferred to the sd C., D., and E., in mner and
 Wit- upon the trusts hinafter expd: NOW THIS INDRE
 nesseth. WITNETH that in psuance of the sd agreemt, &c., *assign-*
 Assign- ment by A., “as settlor,” (b) *to the trustees of, “ALL THAT the*
 ment of sd principal sum of £—— secured by the hinbefore recited
 debt. indre as afsd, and the interest now due and henceforth to
 become due on the same, and the benefit of all secs for the
 same,” and *habendum, p. 429, form 1., with the variation,*
where the settlement is effected by a separate deed (c):
 Further AND THIS INDRE ALSO WITNETH that, in further
 witnesseth. psuance of the sd agreemt, and in conson of the sd intd
 Convey- marre, she, the sd A. as settlor (b), with the approbation
 ance of of the sd B., doth hereby, &c., *conveyance of mortgaged*
 mortgaged property. *property to trustees subject to redemption, p. 217; clause as*
to appointment of new trustees, p. 490, form LXXXI.
 IN WITNESS, &c. (d).

text discloses the existence of the trust; but this is not attended with any practical inconvenience, as the deed is framed so as to prevent the settlement being material to the title. If the settlor has only an equitable interest in a mortgage vested in trustees, a separate deed is unnecessary; see Prec. IV. As to the stamp on this deed, see The Stamp Act, 1870, s. 126, Schedule, tit. “Mortgage Transfer.”

(b) It seems correct that the settlor should assign the debt, and also convey the mortgaged property “as settlor,” so as to imply only the limited statutory covenant for further assurance as to both; unless it is intended that the full covenants for title should be entered into, in which case the words “as beneficial owner,” would be substituted; see p. 429, note.

(c) If there is any doubt as to the possibility of immediately giving notice of the assignment a power of attorney should be inserted here, see p. 40, form XVIII.; as to the omission of the power (see Vol. I., p. 112, note).

(d) Notice of the transfer should be given to the mortgagor.

IV.

SETTLEMENT, on Marriage, of a MORTGAGE Debt, PREC. IV.
 belonging to the Wife, and REVERSIONARY SHARE
 under her Parents' SETTLEMENT and an APPOINT-
 MENT (a), and of POLICIES on the life of the Hus-
 band, effected in the NAMES of the TRUSTEES of the
 Settlement. The WIFE taking the FIRST LIFE
 INTEREST. The Husband's FATHER COVENANTS to
 pay an ANNUITY. The Wife's FATHER COVENANTS
 to MAKE UP her Reversionary SHARE to a CERTAIN
 SUM. VARIATIONS, where the Wife's Interest in
 the MORTGAGE is EQUITABLE only, and where a
 FIXED SUM raisable out of the REVERSION is
 settled, and where the HUSBAND is a FOREIGNER (b).

(a) The appointment is usually made by a separate deed, which is the more convenient practice and attended with little additional expense. For forms of appointments, see APPOINTMENTS. The enactment in the Bankruptcy Act, 1869, s. 91, invalidating a settlement by a trader of his future-acquired property, does not apply to a settlement of a reversionary share under an existing settlement to which the settlor may become entitled under a future appointment; *Re Andrews*, 7 Ch. D. 635.

(b) In the absence of a settlement, the rights and obligations imposed by Matrimonial marriage on the husband and wife are those of the matrimonial domicile, *i.e.*, monial of the place in which the newly married couple intend to establish their home. domicile. See *Colliss v. Hector*, L. R. 19 Eq. 334; Story, Conflict of Laws, ss. 191 to 199; see also the authorities collected, Sirey, Les Codes Annotés, note to Code Napoleon, Art. 1387. The marriage settlement must be interpreted according to the law of the place where it is contracted (Story, Conflict of Laws, s. 276), or rather, it is submitted, according to the law with reference to which it is evidently framed (*Chamberlain v. Napier*, 15 Ch. D. 614). A marriage difficulty occurs where the provisions of a marriage settlement, though lawful according to the law according to which it has to be interpreted, are unlawful in the place of the matrimonial domicile. As for example, the usual clauses as to children in an English settlement would be illegal according to French law, Code Napoleon, 1389. It appears from *Van Grutten v. Digby*, 31 Beav. 561, that if a marriage is contracted in England between an English woman and a foreigner with the intention that the matrimonial domicile shall be foreign, on the faith of a settlement in the English form, entered into previously to the marriage, relating to property subject to the law and within the jurisdiction of England, the English courts will determine the rights of

Operation
of settle-
ment on
persons of
different
domiciles.

PREC. IV.	<i>PARTIES, A., husband (c), 1; B., wife (c), 2; C., husband's father, 3; D., wife's father, 4; E., F., and G., trustees, 5.</i>
Recitals.	<i>Recite intended marriage, p. 421; Title of B. under her father's marriage settlement, and an appointment to, "one equal — part or share of the trust funds," &c., subject to her parent's life interest, p. 424, form IV.; Particulars of trust property, p. 425, form VI.; [If the mortgage is legally vested in B. and is transferred to the trustees by a separate deed, recite the transfer, p. 427, form XV.; If B.'s interest in the mortgage is equitable only, substitute, "AND WHAS the sd B. is, under or by virtue of, &c., beneficially entled to one equal — part or share of or in a principal sum of £—— and interest secured by a mtge of certain freehd and copyhd hereds belonging to —, situate at, &c., which principal sum of £—— and interest, togr with the secs for the same, is now legally vested in K. and L.;"] Agreement for settlement, p. 425, form VIII. of, "the sd — pt or share or other share or shares to which the sd B. is now or will upon the sd marre become entled of or in the trust funds or ppty comprised in the sd settlemnt (d), [If B.'s interest in the mortgage is equitable only, add, "and also the sd principal sum of £—— to which the sd B. is entled as afsd, and the interest thereon"]:</i> <i>Title to and agreement for settlement of policies on A.'s life, p. 427, form XIV.; Agreement that C. should</i>
Of title to equitable interest in mortgage.	
Agreement for settlement.	

all persons claiming under it, as if the whole matter were to be regulated by English law. A marriage solemnised in and valid according to the law of England may where one of the parties is a foreigner be invalid in his or her country owing to the law of that country. See Code Napoleon, 170. It is always prudent where one of the parties is a foreigner to ascertain that the law of his or her country contains no such provisions.

(c) When the intended husband is a foreigner say, "domiciled in _____."

(d) If a fixed sum, raisable out of the reversion, is settled, substitute for the above a recital of agreement for settlement of "the sum of £——, to be raised out of the sd pt or share," &c., as in the text, "when the same shall fall into possion." If the balance of the reversion is not to be settled, it will of course be excepted out of the covenant (if any), to settle the wife's other and after-acquired property.

covenant for payment of annuity, p. 429, *form XVIII.* : AND WHAS it has been further agrd that the sd D. shall enter into the covenant hinafter contd for making up the amount of the sd reversionary share or interest of the sd B. to the sum of £——; *Agreement as to making up the value of reversionary interest.* *Agreement as to making up the value of reversionary interest.* *Witnesseth.* *Assignment.* *Trusts.* *INDRE WITNETH, assignment by B., "as settlor," of, settlement and appointment, p. 429, form I. and p. 480, note, (f) [If B.'s interest in the mortgage is equitable only, add, "AND ALSO all that," &c., the sum secured on mortgage, p. 482, note]. AND IT IS HEREBY AGRD AND DECLD that the sd E., F., and G., their exs, ads, and assigns, shall, from and after the sd intd marre, stand possessed of the sd pt or share (g), [mtge debt and interest] and premes hby assigned [If the mortgage is transferred by a separate deed, add, " and*

(c) When the intended husband is a foreigner, say, "AND WHAS it is the intention of the parties hto that these presents shall be construed, and that the rights of all psons claiming hereunder shall be regulated by the law of England in the same mner as if the sd A. were now domiciled in England, and as if both the sd A. and B. were to remain henceforth during their respite lives domiciled in England."

(f) If a fixed sum, raisable out of the reversion, is settled, substitute an assignment of "the sum of £——, to be raised out of the sd pt or share, &c., as soon as may be after the same pt or share and premes shall fall into possion, and to be paid to the sd, *trustees*, their exs, ads, or assigns, without any deduction in respect of succession [legacy] duty, expenses, or otherwise, with interest thereon, at the rate of —— per cent. per annum, from the day when the sd pt or share and premes shall fall into possion until the same sum of £—— shall be raised and paid."

(g) In the case mentioned in the last note, say, "the sd sum of £—— and interest:" the alterations in the rest of the Precedent for this case will be obvious.

PRINC. IV. the sd mtge debt of £—— and interest which have been transferred to the sd trees by the hinbefore recited indre of even date herewith”]: UPON TRUST that they, the sd E., F., and G., or the survors or survivor of them or the exs or ads of such survivor or other the trees or tree for the time being of these presents (hinafter called the sd trees or tree) shall either allow the sd pt or share as and when the same shall fall into possion and be received by the sd trees or tree, and the sd mtge debt, or any of them, or any pt or pts thof resply, to remain, &c., *continue investment clause, see pp. 433—437, forms III.—VI.* : AND SHALL during the joint lives of the sd A. and B., pay the income of the sd resptive trust premes and the investmts representing the same resply (including any interest now accrued but not yet received, on the sd mtge debt of £——) to B. *for life without anticipation, p. 438, form XI., remainder to A. for life, p. 440, form XIV.* : AND AFTER the death of the survivor of them the sd A. and B. shall stand possessed of the sd resptive trust premes, and the income thof, &c., *trusts for issue of marriage, p. 445, form XXV. (a), or p. 446, form XXVI., and p. 447, form XXVIII., hotchpot, advancement [maintenance, and accumulation] clauses, pp. 448—451. Ultimate trust of wife’s fortune, p. 451 (b); [Power to trustees to pay income to wife’s bankers, p. 445]; Trusts of policies by reference to the trusts declared*

Investment.

Trusts during lives of husband and wife.

After the death of husband and wife.

Trusts of policies.

(a) Where the intended husband is a foreigner, say, in the power of appointment, “by will or codicil, executed in such mner as to be valid according to the law of the domicile of such survivor, or by any writing, purporting to be a will or codicil, executed in such mner that the same would be valid as such according to the law of England if such survivor were, at the time of his or her death, domiciled in England, and so that in the case of the sd B., such will, codicil, or writing shall be valid whether she shall be covert or sole.” See Story, Conflict of Laws, ch. xi., s. 473.

(b) Where the intended husband is a foreigner, the power of appointment by will will be in the form given in the last note, *mutatis mutandis*.

of, "the sd pt or share, and premes hereby assigned," with PREC. IV.
ultimate trust for A., p. 454; *Insert such of the clauses,*
XXXVIII. to XLIII., relative to the policies as may be appropriate. Covenants.
Covenant by C. to pay annuity to the trustees and declaration
of trust, pp. 459, 461, (c); *Covenant by D. to make up B.'s*
reversionary interest to a certain sum and declaration of trust,
 p. 459; *Agreement to settle B.'s other and after-acquired*
property, p. 477; *Power to trustees to apportion blended trust*
funds, determine questions, settle accounts, &c., p. 486; [*Spe-*
cial power to trustees to settle accounts as to reversionary
share settled by B., p. 487]: *Clauses supplemental to statutory*
provisions as to appointment and indemnity of trustees, p. 490,
form LXXXI. and p. 491, form LXXXIV (d).

IN WITNESS, &c. (e).

(c) Add, if so intended, "but so that if the sd B. shall marry again after the death of the sd A., the same annual sum shall be paid and applied to the psons, for the pposes, and in the mner to, for, and in which the same would be payable or applicable if the sd B. were dead."

(d) Where the intended husband is a foreigner, add, "AND IT IS HBY AGRD AND DECLD by all the pties hto, and partarly by the sd A., that these presents shall be construed, and that the rights of all psons claiming hereunder shall be regulated, according to the law of England, in the same mner as if the sd A. were now domiciled in England, and as if the sd A. and B. were to remain henceforth during their respive lives domiciled in England."

(e) Notice of the settlement must be given to the trustees of the marriage settlement of the wife's parents; and, if the wife's interest in the mortgage is equitable only, to the persons in whom it is legally vested.

V.

PREC. V.

SETTLEMENT, *on Marriage, of SHARES in a RESIDUARY ESTATE, to which the WIFE is entitled partly in POSSESSION and partly in CONTINGENCY, and of a sum of CONSOLS in COURT, to which the HUSBAND is CONTINGENTLY entitled in REVERSION. COVENANT by the Husband for PAYMENT of an ANNUITY CHARGED on the net PROFITS of his BUSINESS. Each takes the FIRST LIFE INTEREST in his or her OWN PROPERTY, the HUSBAND'S LIFE INTEREST in his OWN PROPERTY being CHARGED with MAINTENANCE for his Wife and Children. And his LIFE INTEREST in the WIFE'S PROPERTY being made DETERMINABLE on BANKRUPTCY, &c.*(a). POWER to invest in PURCHASE of LAND. POWER to either party to make a SETTLEMENT on a FUTURE MARRIAGE. POWER to trustees to obtain a STOP ORDER. VARIATIONS where the Husband takes a DETERMINABLE or PROTECTED LIFE INTEREST in the Wife's property, and where the WIFE being an INFANT is put to her ELECTION to CONFIRM the SETTLEMENT.

Recitals.
Husband's
title to
contingent
interest in
consols in
court.

PARTIES, A., husband, 1 ; B., wife [an infant under the age of twenty-one years], 2 ; C., D., and E., trustees, 3. Recite intended marriage, p. 421 : AND WHAS the sd A., as one of the six children now living of K., deceased, by his wife L., will, in the event of his surviving the sd L., become entled under the will of the sd K., which was proved on the — day of — in the, &c., see Vol. I., p. 333, to one equal sixth pt or share, or to some other pt or share, or to the whole of a sum of £—— Consolidated £3 per Cent. Annuities now standing to the credit of a cause of M. v. N., add

(a) See p. 441, *et seq.*, notes.

reference to record, the account of, &c. : AND WHAS the sd PREC. V.
A. is carrying on the business of — in co-ptnship with
X. and Y. under the firm of — : AND WHAS the sd B., as Wife's title to reversionary interest, partly vested and partly contingent.
one of the children of H., by G. his late wife, is [will upon
marre become] entled in possion to one equal fourth pt or
share of the trust funds and ppty subjt to the trusts of an
indre dated, &c., and expd, &c., which now consist of the
parlars specified in the schedule hto, And in the event of
the death of her brother Q., under the age of twenty-one
years, will become entled in possion to one equal third pt
or share of another such fourth pt or share, and of the
accumulations, if any, of such share, or of so much of the
same respively as shall not have been applied under the
trusts of the sd indre of, &c. : AND WHAS, upon the treaty Agreement for settlement.
for the sd intd marre, it was agrd that the said A. and B.
should respively assign the sd several trust premes to which
they are, or may become, respively entled as hinbefore is
recited to the sd C., D., and E., upon the trusts and with
and subjt to the powers and provons hinafter decld and
contd concerning the same respively, And it was also agrd And for covenant to pay annuity.
that the sd A. should enter into the covenant hinafter contd
for paymt of an annuity to be held upon the trusts hinafter
decld, and that such annuity should be collaterally secured
in mner hinafter appearing, and that these presents should
contain such other provons as are hinafter expd : NOW Wit-
THIS INDRE WITNETH, *assignment by A. to trustees* nesseth.
of his contingent interest in the Consols, p. 429, form 1., and Assign-
p. 481, note, mutatis mutandis. Similar assignment by B. of ment
“ALL THAT one equal fourth pt or share to which she is of rever-
[sionary interests.
[will upon the sd intd marre become] entled as afsd, AND
ALL that one equal third pt or share of another fourth pt or
share, and of the accumulations thof to which she is con-
tingently entled under the trusts of the sd indre of, &c.,
AND ALL other (if any) the pt or share, or pts or shares, to
which she is now, or will in any event, become entled of or
in the trust funds and ppty subjt to the trusts of the same
indre,” p. 429 ; AND IT IS HBY AGRD and decld that, &c.,

PREO. V. *Trust for investment*, pp. 438—437, forms III.—VI. (b); AND SHALL, during the life of the sd A., pay the income of the sd premes first hinbefore assigned, and the investmts representing the same (which are hinafter referred to as the fortune of the sd A.), unto the sd A. and his assigns: *Proviso charging husband's life interest in*, "the fortune of the sd A.," with maintenance of his wife and children, p. 444. AND IT IS HBY AGRD that after the death of the sd A. the sd trees or tree shall pay the income of the fortune of the sd A. to the sd B., for life without anticipation, p. 440, form xv.: AND SHALL, during the life of the sd B., pay the income of the sd premes secondly hinbefore assigned, and the investmts representing the same (which are hinafter referred to as the fortune of the sd B.) &c., *trust for B. for life without anticipation*, p. 438, form xi.; *And after her death to A. for life, determinable on bankruptcy, &c.*, p. 442, form xix. [if the husband is to take a protected life interest add, if so intended, "but so, nevertheless, that such cesser or determination of the interest of the sd A. shall not affect his right to exercise, or concur in exercising, the several powers hby given to him of consenting to investmts and changes of investmt, and of making appointmts in favour of the issue of the sd intd marre."] *Discretionary trust for application of the income*, "of the fortune of the sd B.," on husband's bankruptcy, &c., for the benefit of himself and family, p. 442, form xx., or p. 443, form xxi.; or if he is not to take a protected life interest

Variation
for deter-
minable
life inte-
rest.

(b) If A.'s life interest in B.'s fortune is determinable, but not protected, the provision as to consents to investments may be, "with the consent of the sd A. and B. during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at the discretion of the sd trees or tree (but so that as regards the premes secondly hinbefore assigned, the consent of the sd A. to an investmt or change of investmt shall not be required in the event of the determination of the trust hinafter decl'd in his favour concerning the same premes)."

insert, in lieu of this, form XXII. (c) ; AND IT IS HBY AGRD AND PREC. V.
 DECLD that after the death of the survor of them the sd Trusts
 A. and B., the sd trees or tree shall stand possessed of the after death
 fortune of the sd A., and also of the fortune of the sd B., of survivor
 and the income thof respively, *Usual trusts for issue of mar-* of husband
riage, as A. and B., or survivor shall appoint, p. 445, form and wife.
xxv., or p. 446, form xxvi. ; [Proviso to be added to power
where husband's life interest is determinable, p. 446 (d)] ;
Trust for children in default of appointment, p. 447 ; Hotchpot
clause, p. 448 ; Advancement clause, p. 448 ; Addition to
hotchpot and advancement clauses, providing for valuation of
land, &c., p. 449, form xxxii. ; [Maintenance and accumula-
tion clauses, pp. 449, 451] ; Ultimate trusts of husband's and
wife's fortunes, p. 451, form xxxv. ; Agreement to settle wife's
after-acquired property, p. 477 ; Covenant by husband with Covenant
to pay

(c) If the husband takes the first life interest determinable on bankruptcy, Variations
 in the wife's fortune, substitute for the trusts in the text, "*Life interest* for deter-
determinable on bankruptcy, p. 441, form xviii.," with the minable or
 addition, if so intended, of the clause in the text as to the exercise of the protected
 powers after such determination. "AND SHALL, after the death of life inte-
 the sd A., or the determination during his life of the trust rest.
 hinbefore decl'd of the sd income in his favour, pay the
 income of the fortune of the sd B. to the sd B., &c., *continue*
life interest to wife, p. 440, form xv. ;" for a protected life interest,
 add, "and shall, after the death of the sd B., and the
 determination, &c.," *continue discretionary trust, p. 442,*
form xx. ; or, where the life interest is not to be protected,
insert form xxii.

(d) Or, if so intended, substitute "but so that in the event of Addition
 the sd A. surviving the sd B., and the failure or determina- to power
 tion in his lifetime of the trust hinbefore decl'd in his favour of appoint-
 of the income of the fortune of the sd B., the power lastly ment.
 hinbefore cont'd shall not be exercised so as to diminish the
 share to which any child of the sd intd marre shall have be-
 come entled, by virtue of the trusts hinbefore cont'd, of the
 fortune of the sd B."

PREC. V. *trustees to pay annuity*, p. 459, *form XLVIII.*, saying, "such yearly sum as is hinafter mentd, that is to say, during the joint lives of the sd A. and B. the sum of £—, and in case the sd B. shall die in the lifetime of the sd A., and while any issue of the sd intd marre shall be living, then during the remr of the life of the sd A., if and so long as any issue of the sd intd marre shall be living, the sum of £—"; **AND IT IS HBY AGRD AND DECLD** that the sd yearly sum of £— or £—, as the case may be, shall be held by the sd trees and tree upon the trusts hinbefore decld concerning the income of the trust premes secondly hinbefore assigned, with the exception that after the death of the sd B., if the same shall happen in the lifetime of the sd A., the sd trees or tree shall pay or apply the yearly sum, if any, then payable under the covenant lastly hinbefore contd to the psons or pson and in the mnner to whom and in which such income would be payable or applicable if the sd A. were then dead; **AND THE SD A. doth hby charge his share in the net profits of the sd business, with the paymt of the sd respive yearly sums of £— and £— at the times and in mnner afsd; Power to invest in purchase of land**, p. 473, *form LXVII.*, or p. 476, *form LXVIII.* (e); *Power to either party to make a settlement on a future marriage*, p. 481, *form LXX.*; [*Clause putting wife, if an infant, to her election to confirm settlement*, p. 486; (f)] *Power to trustees*,

annuity
variable
in amount.

Trusts of
annuity.

Charge on
profits of
business.

As to set-
tlements of
the wife's
property
where she
is an
infant.

Effect of

(e) As to the application of the powers of sale, &c., under the Settled Land Act after forfeiture of the life interest where it is followed by the usual discretionary trust, *i.e.*, a protected life interest, see *infra*, p. 541, note.

(f) Prior to the Married Women's Property Act, 1882, where the intended wife was an infant, a settlement of her property, with the concurrence of the intended husband, though not binding on her, was binding on him, and effectual as to any interest which he would have taken maritally in the absence of a settlement (see 3 Dav. Prec. 647); but beyond this it could only be made effectual by the wife being put to her election, where property was also settled by the husband or some other person, so as to preclude her from taking any benefit from such property except on the terms of confirming the settlement of her own property, or else obtaining the sanction of the Court to the settlement under the Infants' Settlement Act (see Prec. X. *infra*).

Under the existing law, as altered by the Married Women's Property Act,

at cost of A., "or of the trust este," to obtain a stop order on, PREC. V.
 "the share and premes first hinbefore assigned," p. 120,
mutatis mutandis; Power to trustees to apportion blended trust
 funds, and determine questions, and to arrange and compro-
 mise, p. 486; Special power to settle accounts, &c., p. 487,
 form LXXVIII.; Clauses as to appointment and indemnity of

1882, as all the wife's property existing at the time of the marriage or after- Married Women's Property Act, 1882.
 wards acquired is her separate estate to the entire exclusion of the husband
 (see p. 91, note); except, as it seems, as to his common law right after the
 wife's death in the absence of any disposition by her (see p. 453, note); a
 settlement or agreement for a settlement of the infant wife's property is
 altogether invalid, except so far as it may derive any efficacy as against the
 husband in respect of any interest he may acquire under any disposition after-
 wards made in his favour by the wife in contravention of the settlement, or by
 his marital right if he survives her (see *Simson v. Jones*, 2 Russ. & Myl. 365;
Johnson v. Johnson, 1 Keen, 648, decided as to personalty belonging to the
 intended wife for her separate use under the old law). In future, therefore,
 where the intended wife is under age, and the Infants' Settlement Act cannot
 be had recourse to, a clause expressly putting the wife to her election should
 be inserted, if property is also settled by the husband or any other person;
 otherwise the husband may be made to covenant that the wife shall make or
 confirm the settlement when of age, with a provision protecting the trustees
 from responsibility for not taking proceedings under the covenant. In either
 case, the wife should by a short deed make or confirm the settlement on
 attaining her majority. As to what is sufficient to put the wife to her election,
 see 3 Dav. Prec. 649; and as to what amounts to a confirmation by her of the
 settlement, see *Davies v. Davies*, L. R. 9 Eq. 468; *Milner v. Lord Harc-*
wood, 18 Ves. 277; *White v. Cox*, 2 Ch. D. 387; *Wilder v. Pigott*,
 22 Ch.D. 263.

The following is a form of covenant by the intended husband that the
 intended wife shall make the settlement when of age.

"And in psuance of the sd recited agreemt, and in con- Covenant by husband that wife shall make settlement when of age.
 son of the sd intd marre, the sd, husband, doth hby covenant
 with the sd, trustees, their exs, ads, and assigns, that if the
 sd intd marre shall take place, then as soon as practicable
 after the solemnization thof, and after the sd, wife, shall have
 attained the age of twenty-one years, she, the sd, wife,
 her [hrs] exs, or ads, and all other necessary pties, if any,
 shall at the cost of the trust este execute and do all such
 [conveyances, assignmts, assurances] transfers, and things
 as shall be necessary or proper for effectually vesting in the

PREC. V. *trustees, p. 490, form LXXXI., and p. 491, form LXXXIV.; Clause as to sole trustee under Settled Land Act, p. 493.*

IN WITNESS, &c. (g).

Schedule.

VI.

PREC. VI. **SETTLEMENT, on Marriage, of FREEHOLDS belonging to HUSBAND by means of a TRUST for SALE, and DECLARATION of TRUST of the PROCEEDS of Sale, effected by ONE DEED (a). VARIATION where there are NO RECITALS.**

PARTIES, A., husband, 1; B., wife, 2; C., D., and E., trustees, 3. Recite intended marriage, p. 421; Title of A. as in a Conveyance on Sale, see Vol. I. "CONVEYANCES ON SALE"; AND WHAS upon the treaty for the sd intd marre it was agrd that the sd — and premes should be assured to the sd C., D., and E., their hrs and assigns, in mner hin-after appearing, upon the trusts, and with and subjt to the

Recitals.

Agreement for settlement.

sd trees or tree all, &c., *parcels*, Upon trust, &c., PROVD always that the sd trees or tree shall not be under any obligation to take proceedings under the covenant of the sd, *husband*, lastly hinbefore contd or incur any responsibility for any omission so to do."

(g) Notice of the settlement must be given to the trustees of the will, and a stop order obtained on the fund in court.

(a) See p. 462, note. For similar settlements, effected by two deeds, see *Precedents VII., VIII., and IX.* If the property, or any part of it, is likely to be sold, it is better that the conveyance in trust for sale should be by a separate deed, in order that the settlement may not become part of the title to the land. But if in the event the land is retained unsold, the settlement, whether by the same or a separate deed, must necessarily become a title deed. For variations where an undivided share is settled, see the next *Precedent*, and for a reversion, see *Precedents VIII. and IX.*

powers and provons hinafter decl'd and cont'd concerning the same; *Agreement as to settlement of wife's after-acquired property*, p. 428 (b): NOW THIS INDRE WITNETH that in psuance of the sd agreemt, and in conson of the sd intd marre, the sd A., as settlor (c), with the approbation of the sd B., doth hby, [if A. has a power of appointment say, in exercise of the power for this ppose given to him by the hinbefore recited indre of, &c., and of every other power enabling him in this behalf, appoint, and by way of further assurance doth hby] grant unto the sd C., D., and E., and their hrs, *Parcels*, see *Vol. I.*, p. 344, *omitting the general words and estate clause*, see *Vol. I.*, pp. 357, 359, notes. To the sd hereds and premes hby assured UNTO the sd C., D., and E., and their hrs, To THE USE of the sd A., and his hrs, until the sd intd marre, and after the sd marre, To THE USE of the sd C., D., and E., their hrs and assigns, UPON TRUST, &c., *Trust for Sale, &c.*, p. 462, *Declaration of trusts of sale monies and rents until sale*, p. 465, *form LIV*. AND IT IS HBY AGRD and decl'd that the sd trees or tree shall, with the consent in writing of the sd, husband and wife, or the survor of them, during their, his, or her lifetime, and after the death of such survor at the discretion of the sd trees or tree, invest the residuary or net monies to arise from the sale under the trust for sale hinbefore cont'd of the hereds and premes hby assured, or any of them, as

PREC. VI.

Wit-
nesseth.

Grant.

Parcels.

Haben-
dum.

To usea.

Trust for
invest-
ment.

(b) In a simple case recitals might be dispensed with, the operative part commencing as follows, "WITNETH, that in psuance of an agreemt in this behalf entered into upon the treaty for, and in conson of, a marre which is intd shortly to be solemnized between the sd A. and B., the sd A., as settlor, doth hby [in exercise of a power cont'd in a certain indre, dated, &c., and exp'd, &c., and of every other power, &c.,]" as in the text.

Variation
where
recitals
omitted.

(c) This implies the limited statutory covenant for further assurance; if it is desired that the settlor should enter into the full statutory covenants for title according to the old practice, the words "as beneficial owner" will be substituted; see p. 429, note.

PREC. VI. and when the sd monies shall be received, in the names or name [or under the legal control] of the sd trees or tree in or upon, &c., *Investments*, see pp. 495—497, forms IV.—VI. ; *Trusts for husband for life*, p. 440, form XIII. ; *Wife for life without anticipation*, form XV. ; AND AFTER the decease of the survivor of the sd A. and B. shall stand possessed of the sd trust premes and the income thof, *Usual trusts for issue of marriage, as in Precedent I., with the addition to hotchpot and advancement clauses providing for valuation of land*, p. 449, form XXXII. ; *Ultimate trust in default of issue, for husband*, p. 451, form XXXV. ; *Power to manage until sale*, p. 467, form LVII. or LVIII. ; [*Leasing powers*, p. 468, form LIX., or p. 470, form LX., unless omitted in reliance on the statute] ; *Power to invest in the purchase of land (d)*, p. 473, form LXVII., with the variation in note (g) ; *Provision for settlement of wife's after-acquired property*, p. 477, form LXIX., with the variation in note (b), p. 479 ; *Power to trustees to apportion blended trust funds, &c.*, p. 486 ; *Clauses as to appointment and indemnity of trustees*, p. 490, form LXXXI., and p. 491, form LXXXIV. ; *Clauses as to Settled Land Act*, p. 473, forms LXV. and LXVI., and p. 498, form LXXXVIII.

IN WITNESS, &c.

VII.

PREC. VII.

CONVEYANCE, on Marriage, of FREEHOLDS belonging to WIFE in TRUST for SALE, with a DECLARATION of TRUST of the PURCHASE MONEY by REFERENCE to a SETTLEMENT of EVEN DATE. POWER to sell

(d) Where land is settled, a power to purchase adjoining land may be useful.

for FEE FARM RENTS. VARIATIONS for an UN- PREC. VII.
DIVIDED SHARE.

PARTIES, A., husband, 1; B., wife, 2; C., D., and E., trustees, 3. *Recite intended marriage*, p. 421; *Title of B.*, Recitals. *as in a Conveyance on Sale*, see Vol. I., "CONVEYANCES ON SALE"; *Agreement for settlement as in last Precedent (a)*: NOW THIS INDRE WITNETH that in psuance of the sd Wit- agreement, and in conson of the sd intd marre, the sd B. as nesseth. settlor (see p. 429, note), with the approbation of the sd A., doth hby grant unto the sd C., D., and E., and their hrs, Grant. *Parcels (b)*, see Vol. I., p. 344, omitting the general words and estate clause, see Vol. I., pp. 357, 359, notes: To HOLD the Haben- sd hereds and premes hby assured UNTO the sd C., D., and dum. E., and their hrs, To THE USE of the sd B. and her hrs until the sd intd marre, and after the sd marre, To THE USE of the sd C., D., and E., their hrs and assigns, UPON TRUST, &c., *Trust for sale*, p. 462; *Declaration of trust of sale monies, &c.*, p. 466, form LV.; *Power to sell for fee farm rents*, p. 465, form LIII.; *Power to manage until sale*, p. 467, form LVII. or LVIII.; [*Leasing powers*, p. 468 or 470, form LIX. or LX. (c), unless omitted in reliance on the statute]; *Clause as to appointment of trustees*, p. 490, form LXXXI.; *Clauses as to Settled Land Act*, p. 473, forms LXV. and LXVI., and p. 498, form LXXXVIII.

IN WITNESS, &c.

(a) For variation where recitals are omitted, see the last precedent, p. 513, note (b).

(b) For an undivided share, say, "ALL THAT equal undivided — pt or share, and all and every other, if any, the pt or share, pts or shares, of or to which the sd B. is seised, possessed, or entled, of and in, *parcels*."

(c) For an undivided share insert the addition in form LXII., p. 471, and power to partition, p. 471, form LXIII., unless the statute is relied on.

VIII.

PREC. VIII.

CONVEYANCE, *on Marriage, of FREEHOLDS, LEASEHOLDS and COPYHOLDS, belonging to HUSBAND, in TRUST for SALE, with a DECLARATION of TRUST of the PURCHASE MONEY by REFERENCE to a SETTLEMENT of EVEN DATE. VARIATION where PART of the Freeholds is REVERSIONARY.*

Recitals. *PARTIES, A., husband, 1; B., wife, 2; C., D., and E., trustees, 3. Recite intended marriage, p. 421; Lease and devolution thereof to A., and title of A. to freeholds and copyholds, as in a Conveyance on Sale:* AND WHAS, upon the treaty for the sd intd marre, it was agrd that the sd freehd, leasehd, and copyhd hereds should be assured to the sd C., D., and E., their hrs, exs, ads, and assigns resply, in mner hinafter appearing, upon the trusts, and with and subjt to the powers and provons hinafter decld and contd concerning the same resply: NOW THIS INDRE WITNETH that in psuance of the sd agreemt, and in conson of the sd intd marre, the sd A., as settlor (a), with the approbation of the sd B., doth hby grant unto the sd C., D., and E., and their hrs, *Freehold parcels, see Vol. I., p. 344, omitting the general words and estate clause, see Vol. I., pp. 357, 359, notes:*

Agreement for settlement. To HOLD all the sd hereds and premes hby granted (b), UNTO the sd C., D., and E., and their hrs, To THE USE of the sd A., and his hrs, until the sd intd marre, and afterwards To THE USE of the sd C., D., and E., their hrs and

Witnesseth.

Grant of freeholds.

Habendum.

(a) See p. 429, note.

(b) If the freeholds are partly reversionary, add here, "subjt as to the sd hereds secondly hinbefore described, to the life este or interest therein of the sd K., under the sd recited indre, &c., or, 'will.'"

assigns, UPON THE TRUSTS, and with and subjt to the powers PREC. VIII.
 and provons hinafter decl'd and contd concerning the same :
 AND THIS INDRE ALSO WITNETH that in psuance Further
 of the sd agreemt, and in conson of the sd intd marre, the witnesseth.
 sd A., as settlor (c), with the approbation of the sd B., doth
 hby assign unto the sd C., D., and E., their exs, ads, Assign-
 and assigns, *Leasehold parcels, by reference to lease, see Vol. I.,* ment of
p. 347, omitting general words and estate clause, Habendum leaseholds.
to C., D., and E., subject to rent and covenants, as in a Con-
veyance on Sale, see Vol. I., p. 362 : IN TRUST for the sd A.,
 his exs and ads, until the sd intd marre, and afterwards,
 UPON THE TRUSTS, &c., *as above :* AND THIS INDRE Further
 FURTHER WITNETH that in psuance of the sd agreemt witnesseth.
 and in conson of the sd intd marre, *Covenant by A., as* Covenant to
settlor (c), with C., D., and E., "in case the sd intd marre surrender
shall take place," to surrender copyholds, as on a sale, see copyholds.
Vol. I., p. 410, but, "at the cost of the sd A. or his hrs,"
 To THE USE of the sd C., D., and E., their hrs and assigns,
 to be holden, &c. UPON THE TRUSTS, &c., *as above ;* Declaration
Declaration of trust "after the sd intd marre," until surrender, of trusts.
see Vol. I., p. 411 : AND IT IS HBY agrd and decl'd that
 the sd C., D., and E., their exs, ads, and assigns resply
 shall, from and after the sd intd marre, stand seised and
 possessed of the sd freehd, leasehd, and copyhd hereds and
 premes hby granted, assigned, and covenanted to be surren-
 dered resply, UPON TRUST, &c., *trust for sale, p. 462 ;*
Declaration of trusts of sale monies and rents till sale, p. 466, form
LV. ; Power to manage real estate until sale, p. 467, form
LVII. or LVIII. ; [Leasing, &c., powers, p. 468, form LIX. or
LX., or p. 472, form LXIV., unless omitted in reliance on the
statute] (d) ; Clause as to appointment of trustees, p. 490, form

(c) See note (a), p. 515, *ante*. That the statutory covenants may be implied in the case of a covenant to surrender copyholds, see Vol. I., p. 368, note.

(d) Where the freeholds are partly reversionary, insert, *addition to powers of sale and leasing, p. 470, form LXI., saying, "such pts of the freehd hereds hby assured as are reversionary."*

PREC. VIII. LXXXI.: **PROVD ALWAYS** and it is hby agrd that the sd trees or tree shall be under no responsibility whatever with respect to the paymt of the rent or the performance or observance of the covenants and condons reserved by and contd in the sd lease of, &c., or any losses, costs, damages, or expenses occasioned by the non-paymt of the sd rent or the breach of any of the sd covenants or condons, and shall be entled to be indemnified and reimbursed in the fullest mner out of the trust este and premes in respect of all costs, damages, and expenses incurred by them or him in relation to the sd leasehd premes. *Clauses as to Settled Land Act, p. 478, forms LXV. and LXVI., and p. 493, form LXXXVIII.*

Indemnity
to trustees
in respect
of lease-
holds (c).

IN WITNESS, &c.

IX.

PREC. IX.

SETTLEMENT, *on Marriage, of the PROCEEDS of sale of REAL estate belonging to HUSBAND CONVEYED in trust for sale by a DEED of EVEN DATE (a), (with VARIATIONS where the interest is REVERSIONARY), and of a SUM COVENANTED to be PAID by the WIFE'S FATHER on his death. The HUSBAND takes the FIRST LIFE INTEREST in the whole settled property, SUBJECT TO paying an ANNUITY to the WIFE. TRUSTS for ISSUE, giving NO POWER of APPOINTMENT to the PARENTS, the ISSUE of any CHILD DYING in their lifetime being SUBSTITUTED (b).*

PARTIES, A., husband, 1 ; B., wife, 2 ; C., wife's father, 3 ;
Recitals. D., E., and F., trustees, 4. *Recite intended marriage, p. 421 ;*

(c) See 2 Dav. Prec. Pt. I. p. 424, note.

(a) See the last two Precedents.

(b) This form of trusts for the issue is exceptional, and not to be recommended.

Conveyance or conveyances in trust for sale of even date, PREC. IX.
 p. 427 ; *Agreement by C. to enter into covenant for payment of*
the "principal sum and interest hereinafter mentd," p. 429 ;
Agreement for settlement of wife's after-acquired property,
 p. 428 : NOW THIS INDRE WITNETH, that in psuance Wit-
 of the sd agreemt, and in conson of the sd intd marre, it is nesseseth.
 hby agrd and decl'd that the sd, *trustees*, their exs, ads, and Declaration
 assigns, shall stand possessed of the residuary or net monies of trusts of
 to arise from the sale, under the sd trust for sale in the husband's
 [several] recited indre[s] of even date herewith contd, of the fortune.
 the sd hereds and premes thby [resp'y] assured (c), or any pt
 thof (d), UPON TRUST that the sd, *trustees*, or the survors or
 survivor of them, or the exs or ads of such survivor, or other
 the trees or tree for the time being of these presents, (hin-
 after called the sd trees or tree), shall, (e) with the consent
 in writing of the sd, *husband*, and, *wife*, or the survivor of them,
 during their, his, or her lifetime, and after the death of such
 survivor, at the discretion of the sd trees or tree, invest the To invest.

(c) Or, "Granted, assigned, and covenanted to be sur-
 rendered," or as the case may be.

(d) If the settlement comprises a reversionary interest in real estate,
 "and also (from and after the decease of the sd, *tenant for*
life,) of any investmts representing the proceeds of any
 sale made in his lifetime, of the sd hereds and premes, or
 any pt thof, which may be transferred to the sd trees or
 tree."

(e) In the case mentioned in the last note, substitute as follows from this
 point, "either retain any such investmts as last afsd, so long
 as the sd trees or tree may think fit, or shall at any time or
 times with the consent, &c., *as above*, sell, call in, or con-
 vert into money the same or any pt thof, and shall invest
 the monies produced thby, and also the sd residuary or net
 monies arising from any sale made as afsd in the lifetime
 of the sd, *tenant for life*, without his concurrence, or after
 his decease, as and when the same shall be received, in the
 names, &c."

	PREC. IX.	same residuary or net monies, as and when the same shall be received, in the names, &c., <i>remainder of trust for investment, see p. 433—437, forms III.—VI.; Trust during joint lives for payment of annuity to wife out of the income, “of the sd trust premes and the investmts representing the same,” and residue of income to husband, p. 441, form XVII.: AND AFTER the death of such one of them the sd, husband, and, wife, as shall first die, shall pay the whole of the sd income to the survivor of them, or his or her assigns, during his or her life, but so that the sd wife shall not have power during her now intd coverture to dispose of or charge such reversionary life interest by anticipation; AND AFTER the death of the survivor of the sd, husband, and, wife, shall stand possessed of the sd trust premes, and the investmts representing the same, in trust for such of the children of the sd intd marre living at the death of such survivor, and such of the children living at the death of such survivor of any child of the sd intd marre who shall then be dead, as being male shall attain the age of twenty-one years, or being female shall attain that age or marry, and if more than one, as tenants in common in equal shares, but so that the children, being objects of this trust, of any child of the sd intd marre who shall have died, shall take equally between them the share only which their parent would have taken if living: Advancement, [maintenance, and accumulation] clauses, pp. 448, 449, and 451, extended to, “child or grandchild of the sd intd marre”; Ultimate trust of husband's fortune, “if there shall be no child or grandchild of the sd intd marre who shall attain a vested interest under the trusts hinbefore declared,” p. 451; Trusts of rents and profits of real estate until sale, p. 466, form XVI.; [Power to invest in the purchase of land, p. 473;] Covenant by C. that his representatives shall pay a sum of £—— on his death, with power to him to pay it in his lifetime, p. 459; AND IT IS HBY AGRD AND DECLD that the sd trees or tree shall stand possessed of the sd sum of £——, when the same shall be received, upon the trusts and with and subjt to the powers and provons hinbefore decld and contd respecting the</i>
Income during joint lives.		
During life of survivor.		
Trusts for children and issue.		
Ultimate trust.		
Trusts of sum covenanted to be paid by wife's father.		

net monies to arise from any sale under the trust for sale in the recited indre of even date herewith contd, but not so as to increase the sd annuity of £—— payable to the sd B., and save and except that, if there shall be no child or grandchild of the sd intd marre who shall attain a vested interest under the trusts hinbefore decl'd, then and in such case, and from and after the death of the survor of the sd A. and B. and such default or failure of their issue, which shall last happen, the sd trees or tree shall stand possessed of the sd sum of £—— and the investmts representing the same, and the income thof or so much thof resp'y as shall not have been applied or disposed of under the trusts or powers hinbefore contd, in trust for the sd C., his exs, ads, and assigns: *Agreement for settlement of wife's after-acquired property*, p. 477, *with the variation in note (b)*, p. 479, *saying*, "child or grandchild"; "son or grandson"; "daughter or granddaughter"; *Power to trustees to apportion blended trust funds and determine questions, &c.*, p. 486; *Clauses as to appointment and indemnity of trustees*, p. 490, *form LXXXI.*, p. 491, *form LXXXIV.*

IN WITNESS, &c.

X.

SETTLEMENT, *on Marriage, with the APPROVAL of the CHANCERY DIVISION, under the INFANTS' SETTLEMENT ACT (18 & 19 Vict., c. 43), of the WIFE'S REVERSIONARY INTEREST in PERSONALTY, and in PORTIONS charged on REAL ESTATE, the ELDEST SON of the marriage being POSTPONED to the younger children. COVENANT by WIFE'S FATHER to pay an ANNUITY VARIABLE in AMOUNT. VARIATIONS where the INFANT is a WARD of COURT (a).*

(a) As to settlements on the marriage of infants, see 3 Dav. Prec., pp. 647, 891; Seton on Decrees, pp. 745, *et seq.*; above, p. 510, note.

PREC. X.	<i>PARTIES, A., husband, 1 ; B., wife, an infant of the age of</i>
	<i>— years, 2 ; C., wife's father, 3 ; D., E., and F., trustees, 4.</i>
Recitals.	<i>Recite intended marriage, p. 421 ; B.'s title to reversionary</i> <i>interest under settlement and deed poll of appointment, p. 424 ;</i> <i>Particulars of trust property, p. 425 ; Wife's title to sum</i>
Agreement for settle- ment.	<i>raiseable under trusts of portions term, p. 424 ; AND WHAS,</i> upon the treaty for the sd intd marre, it was agrd that the trust monies, stocks, funds, shares, and secs, to which the sd B. is entld by virtue of the indre and deed poll first hinbefore mentd, and the sd sum of £— to which she, the sd B., will become entld under the trusts of the term of — years limited by the secondly hinbefore-mentd indre of, &c., and the secondly hinbefore-mentd deed poll, should be assigned to the sd D., E., and F., in mner hinafter appear- ing, to be held upon the trusts, and with and subjt to the powers and provons hinafter decld and contd concerning the same : <i>Agreement as to settlement of wife's after-acquired pro-</i> <i>perty, p. 428 : AND WHAS, upon the treaty for the sd intd</i>
Agreement for real settlement of even date.	<i>marre, it was agrd that further provon should be made for</i> the sd B. by a settlemt of the real estes of the sd A., situate at —, which settlemt has been effected by an indre bear-
Sanction of Chancery Division.	ing even date herewith and expd, &c. : AND WHAS (b) the Chancery Division of the High Court of Justice has sanc- tioned the making by the sd B., in contemplation of the sd intd marre, of the settlemt intd to be made by these pre- sents, as appears by an order of the Court made by Mr.
Variation for ward of court.	(b) Where the infant is a ward of court, and the order directs inquiry to be made as to the fitness of the marriage, and that proposals for a settlement should be laid before the judge, say, "WHAS, psuant to an order, &c., proposals for a settlemt on the marre of the sd B. with the sd A. were laid before the sd judge in chambers, and it ap- pears by the certificate, dated, &c., of the chief clerk of the sd judge, that the sd marre between the sd B. and A. is a proper marre for the sd B., and that these presents have been settled by the sd judge as a proper settlemt to be made and executed previously to such marre."

Justice — on the — day of — (c), in the matter of B., an infant, by C., her next friend, or “guardian,” And in the matter of the Act of Parliamt (18 & 19 Vict. c. 49), intituled, “An Act to Enable Infants, with the approbation of the Court of Chancery, to make binding Settlements of their Real and Psonal Este on Marre,” whby, after premising that the sd judge was of opinion (d) that the settlemt proposed to be effected by the indre thinafter mentd was a proper settlemt to be made upon, or in contemplation of the intd marre of the infant B. with the sd A., of the ppty of the sd infant comprd therein, and that the indre therein referred to (being these presents) was a proper indre for giving effect to such settlemt, the sd judge did, psuant to the sd Act of Parliamt, sanction and approve of the same, and did order that the sd B. be at liberty, upon or in contemplation of her marre with the sd A., to execute the same accordingly: NOW THIS INDRE WITNETH that in psuance of the sd agreemt in this behalf, and in conson of the sd intd marre, the sd B. as settlor (e), with the sanction of the Chancery Division of the High Court of Justice, and with the approbation of the sd A., &c., *continue assignment of reversionary interests*, p. 429, *see note*, p. 430, *the portion money being described as*, “ALL THAT the sd sum of £——, or other the sum or sums, to which the sd B. is or will, upon the decease of the sd C., or otherwise, become entled under the trusts of the sd term of — years limited by the secondly hinbefore-mentd indre of settlemt, of, &c.,

PREC. X.

Wit-
nesseth.
Assign-
ment by
wife with
sanction
of court.

(c) Where the infant is a ward of court, refer to the proceedings constituting her a ward, as, “in the action X. v. Y., *adding reference to record*, and.”

(d) Where the infant is a ward of court, say, unless the form in note (b) above is used, “that the sd intd marre was a fit and proper marre, and.”

(e) See p. 429, note. It is conceived that the power of the court to sanction a settlement by an infant enables it to bind the infant by covenants for title. If so agreed, an express covenant by the husband for further assurance by the wife may be inserted.

and the secondly hinbefore-mentd deed poll bearing even date herewith, as hinbefore recited, and all interest to become payable in respect of the same sum or sums" (f); [*Covenant by A. for further assurance by B., and persons claiming under or in trust for her*, p. 433, form II. (g)]: AND IT IS HBY AGRD AND DECLD that the sd D., E., and F., their exs, ads, and assigns, shall after the sd intd marre stand possessed of the sd premes hinbefore assigned, UPON TRUST that, &c., *Trust for investment*, pp. 433—437, forms III.—VI. (a); AND IT IS HBY AGRD AND DECLD, &c., *First life-interest to B. during joint lives, without anticipation, with remainder to the survivor for life*, p. 440, forms XII. and XVI.: AND AFTER the death of such survor, shall stand possessed of all the sd trust premes, and the monies and investmts representing the same resply, and the income thof resply, *trusts for children, excluding eldest son taking*, "the first este in tail male under the limons of the sd indre of settlemt bearing even date herewith," p. 447, form XXIX.; *Hotchpot*, p. 448; *Advancement*, p. 448, [*Maintenance*, p. 449, and *Accumulation*, p. 451;] *Ultimate trusts of wife's fortune*, p. 451; *Agreement for settlement of other or after-acquired property of B.*, p. 477, [*adding*, "with the exception that the powers of appointmt hinbefore given to the sd A. and B., and the survor of them, in favour of the younger children of the sd intd marre shall be extended so that an eldest or only son for the time being entled to the first este in tail male, under the limons of the sd

PREC X.
Trusts.
Income during lives of husband and wife.
Trusts after death of survivor.
Agreement for settlement of wife's after-acquired property.

Mode of settling portions charged on land.

(f) The portion, being a charge on the settled estates, would usually be assigned by a separate deed, in order that the settlement may not become a title deed to the real estate. The assignment would, in that case, recite the intended marriage, the wife's title to the portion as in the text, and the agreement for the assignment upon the trusts thereafter declared, as in the text. The operative parts would consist of the assignment, in consideration of the intended marriage, to the trustees in trust for the wife until the marriage, and afterwards, upon the trusts declared by the settlement of even date (see p. 429), and the clause as to appointment of trustees, p. 490, form LXXXI.

(g) See note (c) preceding page.

(a) The powers of investment will be settled in chambers.

indre of settlemt bearing even date herewith, may be an object of the sd powers in the same mner as if he had been a younger child ; "] *Power to wife to settle on a future marriage part of the property varying in amount with the number of children of the intended marriage*, p. 482 ; *Covenant by C. with D., E., and F. to pay annuity varying in amount*, p. 459 ; *Declaration that legacy given by C. shall be taken in satisfaction of annuity*, p. 461, *form L.* ; *Trusts of annuity*, p. 461, *form XLIX.* : AND THE SD C. doth hby expressly declare that no paymt of either of the sd annuities shall, and that no legacy or other provon which he may give or make by his will, or otherwise, to or for the sd B., or to or for her husband or issue (unless the contrary shall be expressly directed in the will or other instrumt, by which such legacy or other provon is given or made), shall be accounted as being given or made in or towards satisfson of the sd sum of £—— raiseable under the trusts of the term of —— years limited by the sd indre of, &c., secondly hinbefore recited ; *Power to apportion trust funds, &c.*, p. 486 ; *Trustee clauses*, p. 490, *form LXXXI.*, and p. 491, *form LXXXIV.*

PREC. X.

Declara-
tion that
annuity or
legacies
shall not be
in satisfac-
tion of por-
tion.

IN WITNESS, &c. (b)

Indorsement (c) on the first skin of the Engrossment.

In the High Court of Justice, Chancery Division.

[X. v. Y., add reference to record,]

[or, In the matter of B., an infant, by C., her next friend, or, "guardian," and in the matter of the Act of Parliament, 18 & 19 Vic., c. 43.]

This indre has been settled and approved by Mr. Justice ——, as appears by an order, dated the —— day of ——.

L. M., Chief Clerk.

(b) Notice of the settlement should be given to the trustees of the reversionary interest and the portions term ; as to the latter, see *Re Hughes' Trust*, 2 H. & M. 89.

(c) For the form of affidavit verifying the engrossment, see *Forms to Daniell's Chancery Practice*, 1224.

XI.

PREC. XI.

SETTLEMENT *on the Marriage of a TRADER of a SUM of money intended to be EMPLOYED in his BUSINESS on TRUSTS for HIMSELF and his intended WIFE, and his ISSUE by HER, and by a FORMER MARRIAGE (a), and of FURNITURE belonging to the Husband, and a SUM of money to be applied in the PURCHASE of other FURNITURE in trust for the WIFE'S SEPARATE USE (b).*

<p>Recitals.</p> <p>Issue by former marriage.</p> <p>Payment of sum by husband to trustees.</p> <p>Wit-nesseth.</p> <p>Trusts of one sum of money</p>	<p><i>PARTIES, A., husband, 1 ; B., wife, 2 ; D. and E., trustees, 8. Recite intended marriage, p. 421 : AND WHAS the sd A. has — children, by L. his former wife, now living, all of whom are under the age of twenty-one years and unmarried : AND WHAS, in psuance of an agreemt made upon the treaty for the sd now intd marre, the sum of £6000 has been paid by the sd A. to the sd D. and E. in trust, &c., p. 423, form II., And the sd A. has agrd to assign unto the sd D. and E. all the furniture and effects belonging to him, the sd A., which are partarly described in the schedule hereunder written, upon the trusts hinafter expd concerning the same : NOW THIS INDRE WIT-NETH, that in psuance of the sd agreemt in this behalf, and in conson of the sd intd marre, it is hby agrd and decld that the sd D. and E., their exs, ads, and assigns, shall, after the sd intd marre, stand possessed of the sum of</i></p>
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(a) As to whether limitations to the issue of either party by a former marriage or other collaterals are to be treated as voluntary or within the consideration, see the references, p. 494, note.

(b) The object in this case is to protect the husband's existing and future-acquired furniture from his creditors. This may be effected as to the existing furniture by a simple trust for the wife's separate use (see 3 Dav. Prec., p. 818, note), but a settlement of a trader's future property being invalidated as to creditors by the Bankruptcy Act, 1869 (see p. 494, note), the sum likely to be required for the purchase of the furniture is settled as an existing fund.

£5000, pt of the sd sum of £6000, upon trust that, &c., PRÆC. XI.
Trust for investment, pp. 433—437, *forms III. to VI. (c)*; during lives of husband and wife.
Trust of income for wife for life without power of anticipation, p. 438; and *after her death for husband for life*,
 p. 440; *Proviso charging husband's life interest in*, "the
 sum of £5000 and the investmts representing the same,"
with maintenance of children, "whether by his sd former
 wife L., or his sd now intd wife B.," p. 444, *mutatis mu-*
tandis: AND IT IS HBY AGRD that after the death of the After death of husband and wife.
 survor of the sd A. and B., the sd trees or tree shall stand
 possessed of the sd sum of £5000 and the investmts repre-
 senting the same, and the income thof, in trust "for the
 children or remoter issue of the sd A., whether by his sd
 former or now intd wife," *as he by deed or will appoints*,
 p. 445, *form XXV., mutatis mutandis*; AND IN DEFAULT of
 and subjt to any such appointmt, In trust, &c., *trust in de-*
fault of appointment for, "the children or child of the sd A.,
 whether by his sd former or now intd wife," *if any have*
attained twenty-one say, "have attained, or shall attain,
 &c.," p. 447, *form XXVIII., mutatis mutandis*; *Hotchpot*
clause, p. 448; *Advancement [maintenance, and accumula-*
tion] clauses, pp. 448, 449, 451, *saying*, "child of the sd
 A.;" *Ultimate trusts of*, "the sd sum of £5000, and the
 investmts representing the same, and the income thof
 resp'y," *for A.*, p. 451, *saying*, "child of the sd A.;"
Power to lend trust funds to husband, p. 488: AND THIS
 INDRE ALSO WITNETH, &c., *assignment by A. of fur-* Assign-
niture in schedule to trustees, p. 429, *form I.*, p. 432, *note*: ment of furniture.
 "IN TRUST for the sd A., his exs and ads, until the sd intd
 marre, and afterwards, IN TRUST for the sd B. abso-

(c) If so agreed, insert here, "And shall, during the life of the
 sd, husband, or during such shorter period, &c., *continue*
discretionary trust of income for husband and his family, p.
 442, *second life interest to wife*, p. 440, *form XV.*" instead of the
 trusts of income for wife and husband as in the text.

PREC. XI. lutely (d): AND THIS INDRE ALSO WITNETH that
 Trusts of in further psuance of the sd agreemt, and in conson of the
 other sum sd intd marre, it is hby agrd and decl'd that after the sd
 of money. intd marre the sd D. and E., their exs, ads, and assigns,
 shall stand possessed of the sum of £1000, residue of the
 sd sum of £6000, upon trust, that the sd trees or tree shall
 For pur- apply such sum, or any pt or pts thof, from time to time in
 chase of the pchase of furniture, plate, or other household effects of
 furniture. a suitable character and description, or otherwise, as the sd
 B. shall direct, or shall pay such sum, or any pt or pts
 thof, from time to time to the sd B. for the pposes afsd,
 without being in any way concerned to see to the applica-
 Trusts of tion thof: AND IT IS HBY AGRD AND DECLD that all such
 furniture. furniture, articles, and effects, as may be pchased, whether
 by the sd trees or tree or by the sd B. as last afsd, And also
 the sd sum of £1000, or so much thof as shall not have
 been applied for such ppose, until the same shall be so
 applied, shall be held in trust for or belong to the sd B.
 Trustees' absolutely: PROVD ALWAYS, and it is hby agrd that the sd
 indemnity. trees or tree shall not be bound or concerned to interfere
 with the custody or care of the sd furniture and effects hby
 assigned, or which may be pchased as afsd, unless requested
 in writing so to do by the sd B., and shall not be under any
 liability in respect of the custody, insurance, or preserva-
 tion thof. *Power to trustees to apportion funds, &c.*, p. 486 ;
Trustee clauses, p. 490, 491, *forms LXXXI. and LXXXIV.*

IN WITNESS, &c.

The Schedule above referred to.

Schedule of furniture.

(d) That this trust will operate for the wife's separate use, without express words, see p. 439, note.

XII.

SETTLEMENT, *on Marriage, of FURNITURE, giving* PREC. XII.
the WIFE an absolute Power of DISPOSITION, and
subject thereto IN TRUST for HER for LIFE,
with remainder to the SURVIVOR of herself and
husband.

PARTIES, A., husband, 1 ; B., wife, 2 ; C. and D., trustees,
 3. WITNETH that in conson of a marre intd shortly Wit-
 to be solemnized between the sd A. and B., the sd B., with nesseth.
 the approbation of the sd A., doth hby assign unto the sd Assign-
 C. and D., their exs, ads, and assigns, ALL and singular ment of
 the furniture, plate, linen, china, glass, and other articles furniture
 of household or domestic use or ornament now belonging to
 the sd B., the parlars whof are specified in the schedule hto,
 [AND ALL other household effects which shall at any time and after-
 during the sd intd coverture be acquired by the sd B.], acquired
 UPON TRUST for her, the sd B., until the sd marre, and after- furniture
 wards UPON TRUST to dispose of and deal with the same in as wife
 such mner as the sd B. shall by any writing under her shall ap-
 hand (a), or by will or codicil, direct, AND IN DEFAULT of point.
 and subjt to any such direction, UPON TRUST to allow the In default
 sd B. to use and enjoy the same during the joint lives of for her
 herself and the sd A., AND AFTER the death of such one of separate
 them, the sd A. and B., as shall first die, upon trust for the use.
 survor of them, the sd A. and B., for his or her absolute Remainder
 benefit: PROVD ALWAYS, and it is hby agrd and decl'd, to survivor
 that the sd trees or tree shall not be bound to see to the of husband
 preservation of, or be answerable for the loss or destruction and wife.
 of the sd effects and premes, or any pt thof. Trustees'
indemnity.

IN WITNESS, &c.

The Schedule above referred to.

Schedule of Furniture.

(a) See *Farington v. Parker*, L. R., 4 Eq. 116.

XIII.

PREC. XIII. SETTLEMENT, *on Marriage, of DIAMONDS upon the Wife for her inalienable use.*

Recitals. *PARTIES, A., husband, 1 ; B., wife, 2 ; C., D., and E., trustees, 3. Recite intended marriage, p. 421 : AND WHAS the sd B. is absolutely entled to the diamonds and the settings thof, the parlars whof are specified in the schedule hto, AND upon the treaty for the sd intd marre it was agrd that the sd B. should assign the same to the sd C., D., and E., upon the trusts hinafter decld concerning the same :*

**Wit-
nesseth.** *NOW THIS INDRE, &c., Assignment by B. with approba-
tion of A. of diamonds and settings, referring to schedule, to
trustees, p. 429, form I., p. 432, note : AND IT IS HBY AGRD
AND DECLD that the sd C., D., and E., and the survors and
survor of them, and the exs or ads of such survor or other
the trees or tree for the time being of these presents (hinafter
called the sd trees or tree), shall, after the sd intd marre,
allow the sd B. to have the psonal use and enjoymt of the sd
diamonds and settings during her life, but so that during her
now intd or any future coverture, she shall not be able to
sell, dispose of, or charge the same, or her life interest
therein, and after the death of the sd B. shall stand
possessed of the same UPON TRUST, &c., ulterior trusts :*

Trusts. *PROVD ALWAYS, and it is hby agrd that the sd B. may from
time to time have the sd diamonds reset, but not so as to
diminish the intrinsic value of the settings thof, and that
neither the sd B. nor the sd trees or tree shall be liable for
the loss or destruction of the sd diamonds and settings, or
any of them, and that the sd trees or tree shall not be bound
to interfere as to, or to see to, the safe custody of the sd
diamonds and settings : PROVD ALWAYS that it shall be
lawful for the sd trees or tree, or any agent authorized by
them or him, at the request of any pson interested, or with-
out any such request, if in their or his discretion they or he*

**Power to
reset dia-
monds.**

**Provision
in case of
loss.**

**Power to
trustees to
interfere.**

shall think it necessary for the safe preservation of the sd diamonds and settings, at any time or times to take possession of the same, and to retain such possession during such period as they or he shall think fit; *Clause as to appointment of new trustees*, p. 490. PREC. XIII.

IN WITNESS, &c.

The Schedule above referred to.

Schedule.

XIV.

DEED of CONFIRMATION by the WIFE on ATTAINING her age of TWENTY-ONE years, of a SETTLEMENT made during her INFANCY (a). PREC. XIV.

PARTIES, A., wife, 1; B., husband, 2; C., D., and E., trustees, 3. *WHAS* these presents are intd to be read as supplemental to an indre dated, &c., and expd, &c., being the settlemt executed on the marre of the sd B. and A., which was solemnised shortly afterwards; *AND WHAS* the sd A. attained her age of twenty-one years on the — day of —; *AND WHAS* the sd A. has agrd with the sd B. to confirm the sd settlemt in mner hinafter appearing. *NOW THIS INDRE WITNETH* that in psuance of the sd agreemt and in conson of [the provons made by the sd B., or, *as the case may be*, in favour of the sd A. by the sd settlemt, and of] the premes the sd A. with the approbation of the sd B. doth hby confirm the sd settlemt to the intent that the same shall take effect in the same mner in Recitals.
Witness-
seth.
Confirmation of settlement.

(a) See p. 511, note. A mere confirmation without a formal assignment is sufficient as to any reversionary or other merely equitable interest, or any chattels personal assigned by the settlement, or expressed so to be; but any legal estate in real or leasehold property must of course be formally conveyed. A confirmation of a settlement seems not to be affected by the Infants Relief Act, 1874, 37 & 38 Vict. c. 62, s. 2, except as to the right of action on any covenant or contract by the infant contained in the settlement.

PREC. XIV. all respects as if the sd A. had at the date thof been of
 Further full age; AND THIS INDRE ALSO WITNETH that
 witnesseth. in further psuance of the sd agreemt and for the conson
 Grant of afsd, the sd A., as settlor, with the approbation of the sd
 freeholds. B. doth hby grant, *continue grant of freeholds to trustees as*
 at p. 515. To HOLD the same UNTO and To THE USE of the
 sd C., D., and E., their hrs and assigns UPON THE TRUSTS
 and with and subjt to the powers and provons hinafter
 decld and contd of and concerning the same; *Further testa-*
 Assignment tum, *assignment of leaseholds by A. to the trustees, and haben-*
 of leaseholds. dum, see p. 517, UPON THE TRUSTS, &c., as above. AND IT IS
 HBY agrd and decld that the sd C., D., and E., and the
 survors and survivor of them or other the trees or tree for
 the time being of the sd indre of settlemt shall stand seised
 and possessed of the sd freehd and leasehd hereds and
 premes hby granted and assigned resply, and of the [one
 equal fourth part or share and] premes by the sd settlemt
 expd to be assigned by the sd A. to the sd C., D., and E.,
 and all monies, stocks, funds, shares, property, and premes
 whatsoever by the sd settlemt expd or intd to be settled by
 or on the pt of the sd A., upon, with, and subjt to such
 trusts, powers, and provons as are in and by the sd settlemt
 decld and expd concerning the same resply.

IN WITNESS (b).

XV.

PREC. XV. ARTICLES *under seal for a SETTLEMENT on MARRIAGE* (a).

Wit- PARTIES, A., husband, 1; B., wife, 2; C. and D. trustees
 nesseseth. (hinafter called the trees), 3. WITNETH that in conson

(b) Notice of this deed must be given to the trustees of any prior settle-
 ment or will under which the wife takes an equitable interest comprised in
 her settlement.

As to

(a) It is always desirable to avoid if possible an agreement or articles for a

of a marre which is intd forthwith to be solemnized between the sd A. and B. it is hby agrd as follows: that is to say, PREC. XV.

1. A settlemt of the real and personal ppty comprd and described in the schedule hto shall as soon as may be after the sd intd marre be prepared by the trees in accordance with the provons expd in the sd schedule. Agreement for settlement.

2. Provd always that the trees shall have full power with the consent in writing of the sd A. and B. or the survor of them (b) in case the sd settlemt shall be executed within Power to modify.

settlement, and to have an actual settlement if circumstances admit. This precedent is intended for a case in which there is no time for settling the details of and preparing a formal settlement, the proposals or rough heads being given in a schedule. As to settlements made in pursuance of articles, see 3 Dav. Prec., 663; 1 Lead. Cas. Eq., notes to *Lord Glenorchy v. Bosville*. As to the construction of marriage articles, see Seton on Decrees, p. 1242; and as to rectifying settlements not in accordance with the articles, see *id.* 1233. As to the *ad valorem* stamp on articles for a settlement, see the Stamp Act, 1870, Schedule tit. "Settlement;" and as to the stamp on a settlement made in pursuance of articles, see s. 126 (2). articles for a settlement.

(b) If the parties are going abroad after the marriage it would be better that each should appoint some other person to act on his or her behalf in settling the terms of the settlement; and it is also desirable that each should give a power of attorney to execute the settlement and any necessary conveyances, &c. As to appointment of attorney in case of absence of parties.

At Common Law a married woman could not give a power of attorney, except, perhaps, with the consent of her husband; see *Cooper's Case*, 2 Leon. 200; — *v. Hopkins*, Cro. Car. 165, and note, 2 Buls. 13, overruling some earlier cases, see also the remark of Erle, C.J., in *White v. Greenish*, 11 C. B. N. S. 230; and a power given by an unmarried woman was in general revoked by her marriage; but by the Conv. Act, 1881, s. 40, a married woman can now appoint an attorney to execute any deed, or do any act which she might herself execute or do; and by the Conv. Act, 1882, s. 9, a power of attorney given (whether for valuable consideration or not), by an unmarried woman, may be made irrevocable for a limited time (not exceeding one year) in favour of purchasers (which includes other persons taking or dealing for value, see s. 1, and would therefore apply to a marriage settlement), so as not to be revoked by the marriage; and this is aided by the Married Women's Property Act, 1882, removing the disabilities of married women as to property and contracts. As to the power of a married woman to appoint an attorney.

The following is a form of clause appointing an attorney so as to be irrevocable (except by deed) under the Conv. Act, 1882, s. 9:—

"And the sd A. hby appoints L., of, &c., to be the attorney of him the sd A. in his name or otherwise on his behalf to execute the sd intd settlemt and all such assurances, deeds, transfers, and instrumts as afsd, and to exercise Appointment of attorney.

PREG. XV. one year after the date of these presents, but not otherwise, to modify or depart from the provons expd in the sd schedule in any mner and to any extent either as regards the ppty to be comprd in the settlemt or the mode or form of settlemt or otherwise as may be deemed necessary or desirable, and to insert such other or additional or extended powers and provons as may be thought proper, the intention of the pties hto being that the sd settlemt when executed by the trees with the concurrence of the sd A. and B. or the survor of them shall not be liable to be questioned or in any mner objected to by reason of any want of conformity to these presents or otherwise.

Agreement
to execute
settlement,
&c.

3. The sd A. and B. and their respive hrs, exs, and ads shall when required by the trees and the trees shall also execute such settlemt and shall also execute and do all such conveyances, assurances, deeds, transfers, instrumts, and acts as may be necessary or proper in order fully to effectuate the sd settlemt.

Declaration
of trust.

4. Until the sd settlemt, assurances, deeds, instrumts, and acts, shall have been executed and done as afsd the several persons in whom the ppty comprd and described in the sd schedule hto is now vested resply, and their respive hrs, exs, and ads, shall stand [seised and] possessed of and interested in the same upon the trusts and subjt to the powers and provons in the sd schedule hto expd or implied in relation thto resply.

Interpre-
tation of
"trustees."

5. The expression the trees as hinbefore used shall include the sd C. and D. and the survor of them and the

all powers and discretions hby given to him, on his behalf, and to act in all respects on behalf and as the representative of him the sd A. in relation to the sd settlemt and premes, and hby declares that the appointmt lastly hinbefore contd shall be irrevocable [for one year from the date of these presents] except by an express revocation by deed notified to the sd L."

The appointment of an attorney by B. would be in the same form.

exs or ads of such survor or other the trees or tree for the time being of these presents. PREC. XV.

6. The power of appointing new trees of these presents shall be vested in the sd A. and B. during their joint lives and the survor of them during his or her life. As to appointment of new trustees.

7. The costs of and incidental to the negotiation, preparation, engrossmt, and execution by all pties of these presents and of the settlemt, assurances, deeds, and instrumts afsd, and of doing any other acts for effectuating the sd settlemt shall be paid by the sd A. out of his own monies. Costs.

[8. A declaration by the trees in the sd settlemt to the effect that the same is intd to carry out or effectuate and to supersede these presents shall for all pposes and as against all psons interested be conclusive in that behalf.] As to settlement superseding articles.

Schedule.

Heads of Settlement.

XVI.

VOLUNTARY SETTLEMENT of PERSONALTY on a Son PREC. XVI. (under age) and his Issue (a).

PARTIES, A., settlor, 1; B. and C., trustees, 2: *WHAS* the sd A. has transferred into the joint names of the sd B. and Recitals.
Transfer of stock.

(a) As to the liability of voluntary settlements (and settlements for value also) to be impeached if made with intent to defeat or delay creditors under 13 Eliz. c. 5, see 3 Dav. Prec. Pt. I. p. 675; 1 Smith L. C., notes to *Twyne's Case*. And as to the liability of settlements by traders to be defeated in case of bankruptcy, see the Bankruptcy Act, 1869, s. 91, *Ex parte Hillman*, 10 Ch. D. 622. As to the effect of a power of revocation in letting in the claims of creditors, see 13 Eliz. c. 5, and the Bankruptcy Act, 1869, s. 15 (4) and s. 25 (5), 3 Dav. Prec. p. 679. As to the liability of settlements of land, if purely voluntary, to be defeated by a subsequent disposition for value by the settlor under 27 Eliz. c. 4, see 3 Dav. Prec. 682; 1 Smith L. C., notes to *Twyne's* Law as to voluntary settlements.

PREC. XVI.	C. the sum of £—— — Annuities, to the intent that the
Settlement to be irrevocable.	same shall be held upon the trusts and with and subjt to the powers and provons hinafter decld and expd : [AND to the intent that the settlmt hby made shall be irrevocable]:
Witnesseth.	NOW THIS INDRE WITNETH that in conson of the natural love and affection of the sd A. for his son D., and for divers other good causes and consons, the sd A. doth hby
Declaration of trust.	declare that the sd B. and C., and the survor of them, and the exs or ads of such survor, or other the trees or tree for the time being of these presents (hinafter called the sd trees or tree) shall either permit the sd sum of £—— — Annuities to remain in its actual state of investmt or, with the consent of the sd A. during his life, and after his death,
Investment.	with the consent of the sd D., if he shall be living and shall have attained the age of twenty-one years, and at all other times at the discretion of the sd trees or tree, sell the same or any pt or pts thof, and invest the proceeds of such sale in the names or name [or under the legal control] of the sd trees or tree in or upon, <i>Investments</i> , pp. 435—437, <i>forms</i> IV.—VI.: AND SHALL pay the income of the sd sum of £—— — Annuities, and the investmts from time to time repre-
Trusts during life of father ;	

Case; and as to what is a valuable consideration sufficient to exclude the Act, see *id.*, and the Digest of Cases to the Law Reports, tit. "*Voluntary Conveyance*." As to the importance of expressing whether the settlement is to be revocable or not, see 3 Dav. Prec. 695, *et seq.*; *Hall v. Hall*, L. R. 8 Ch. Ap. 430; *Welman v. Welman*, 15 Ch. D. 570; as to the frame of the power of revocation, see 3 Dav. Prec. 698.

By the Customs and Inland Revenue Act, 1881, s. 38 (2), c., if a life interest, or an absolute power of revocation, is reserved to the settlor in a settlement of personalty, the fund will be liable to probate duty. To avoid this the life interest to the settlor must be omitted or modified so as not to come within the Act, and the power of revocation if inserted must be restricted, *e.g.*, by being exercisable in favour of special objects only, see p. 492, form LXXXVI.

As to the proper frame of a settlement made for the settlor's own protection against improvidence, &c., see 3 Dav. Prec. 697—8, and the cases of *Everitt v. Everitt*, L. R. 10 Eq. 405; *Prideaux v. Lonsdale*, 4 Giff. 159, 1 De G. J. & S. 433; *Phillips v. Mullings*, L. R. 7 Ch. Ap. 244, there referred to.

As to the doctrine in *Ellison v. Ellison*, 6 Ves. 656, as to voluntary trusts, by which voluntary gifts have been frequently defeated, see the notes to that case in 1 Lead. Cas. Eq.; 3 Dav. Prec. p. 686; and the Digest to the Law Reports, tit. "*Gift*."

senting the same, to the sd A. during his life, AND AFTER PREC. XVI.
his death, in case the sd D. shall be under the age of after his
twenty-one years, the sd trees or tree shall during his death,
minority apply the whole or such pt as they or he shall think mainte-
fit of the income of the sd trust premes for or towards the nance of
maintenance or education of the sd D., and may either son.
themselves or himself so apply the same, or may pay the
same to the guardian or guardians of the sd D. without
seeing to the application thof: AND SHALL during such Accumu-
period as last afsd accumulate the residue (if any) of the lation.
same income in the way of compound interest by investing
the same, and the resulting income thof, in or upon any such
investmts as are hinbefore authorised; AND SHALL stand
possessed of such accumulations, and of the investmts thof,
and the income thof, upon the same trusts, and with and
subjt to the same powers and provons as are hinafter decl'd
and expd concerning the original trust fund, and the income
thof: AND AFTER the death of the sd A., and the majority After
of the sd D., the sd trees or tree shall pay the income of the majority
sd trust premes to the sd D. and his assigns during his life (b), of son.
AND AFTER his death shall stand possessed of the same
trust premes, and the income thof, IN TRUST for all or After
such one or more exclusively of the others or other of the death
children, or remoter issue of the sd D. (such remoter issue of son.
to be born, and take vested interests within twenty-one Power of
years from the death of the sd D.) at such age or time appoint-
or respive, &c., *remainder of trust for issue as D. shall by* ment
deed or will appoint, p. 445, mutatis mutandis, saying, "ad- among
avancemt either after the death of the survor of the sd A. son's issue.
and D., &c.;" Trust for children in default of appointment,
p. 447, form XXVIII., mutatis mutandis; Hotchpot clause, p.
448, mutatis mutandis; Power of advancement of son's

(b) A simple trust in remainder after the father's death for the son for life would probably suffice, the maintenance and accumulation clauses being omitted in reliance on the statute, see p. 449, note. It would sometimes be proper to insert a power of advancing the son out of the capital.

PREC. XVI. *children exercisable after death of A. and D., or in their or his lifetime, with their or his consent in writing, p. 448; [Maintenance clause of son's children after death of A. and D., p. 449, and Accumulation clause, p. 451, unless omitted in reliance on the statute;] Power to D. to appoint life interest to a wife surviving him, p. 484, form LXXIII., mutatis mutandis; Ultimate trust in default of children attaining a vested interest for A., his executors, administrators, and assigns, p. 451, form XXXV., mutatis mutandis; Trustee clauses, p. 490, form LXXXI., and p. 491, form LXXXIV.; [Power of revocation, absolute or restricted, p. 492.]*

IN WITNESS, &c.

XVII.

PREC. XVII. *DECLARATION of Trust of SUM ADDED to Settlement (by ENDORSEMENT) (a).*

<p>Recitals. Transfer of stock.</p> <p>Wit- nesseth. Declaration of trust.</p>	<p>THIS INDRE made, &c., BETWEEN the within-named A., of the one pt, and the within-named B., C., and D. (trustees) of the other pt: WHAS the sum of £—— Reduced £3 per cent. Annuities has been transferred by the sd A. to the sd B., C., and D., to the intent that the same shall be held upon the trusts, and with and subjt to the powers and provons hinafter decld and contd concerning the same: NOW THIS INDRE WITNETH that it is hby agrd and decld that the sd B., C., and D., and the survors and survivor of them, and the exs or ads of such survivor or other the trees or tree for the time being of the within-written indre shall stand possessed of the sd sum of £—— Reduced £3 per cent. Annuities, and the stocks, funds, and secs which may from time to time represent the same, and</p>
--	---

(a) As to the importance in making an appointment under the powers in a settlement of referring specifically to a fund added to the settlement fund, see *Re Curteis' Trusts*, L. R. 14 Eq. 217.

the income thof, UPON SUCH TRUSTS, and with and subjt to PREG. XVII.
 such powers and provons as are in and by the within-
 written indre decl'd and cont'd of or concerning the within-
 ment'd sum of £—— — Annuities, and the stocks, funds,
 and secs which may from time to time represent the same,
 and the income thof, or such of the same trusts, powers, and
 provons, as may be subsisting or capable of taking effect,
 but not so as to increase or multiply charges, or powers of
 charging, to the intent that the fund hby settled shall be
 consolidated with, and form one fund with the trust premes
 comprised in, or now subjt to the trusts of the within-written
 indre, and so that (so far as the sd A. can effect that object)
 the hotchpot clause in the within-written indre cont'd shall
 operate in the same mner as if the fund hby settled had
 formed pt of the trust funds originally comprd therein.

IN WITNESS, &c. (b).

(b) The following is a short form of a memorandum, not under seal, for the same purpose, which would ordinarily suffice. This document, as well as that in the text, would require an *ad valorem* stamp as a "settlement" on the value of the stock added to the settlement. "Memorandum.—I, the within-named A., hby declare that the sum of £—— — Annuities was on the —— day of —— transferred by me into the names of the trees of the within-written indre, to the intent that the same should form an addition to the trust funds thby settled, and should be thenceforth held upon the trusts which would have been applicable thto if the same had formed pt of the sum of £—— — Annuities originally settled thby. As WITNESS my hand this —— day of ——."

XVIII.

PREC. XVIII.

DECLARATION of TRUST of MONEY SUBSCRIBED for
the WIDOW and FAMILY of a Man killed by an
accident.

Recitals.
Consols
purchased
with sub-
scriptions.

Declaration
of trust.

Income.

Capital.

DEED OF DECLARATION OF TRUST made the
— day of — BETWEEN A., of, &c., and B., of, &c., of
the one pt, and C., of, &c., of the other pt : WHAS there is
now standing in the names of the sd A. and B. the sum of
£— Consolidated £3 per cent. Annuities, arising from
the investmt of monies raised by subscription for the benefit
of the sd C., the widow of X., late a porter in the service
of the — Railway Co., who was killed by an accident
while in their employ on the — day of — : NOW IT
IS HBY AGRD and decl'd between and by the sd A. and
B. and the sd C. that the sd A. and B., and the survivor of
them, and the exs or ads of such survivor shall henceforth
stand possessed of the sd sum of £— Annuities, and the
income thof, UPON TRUST in the absolute and uncontrolled
discretion of the sd trees or tree from time to time to pay
and apply the income of the sd trust fund, or of so much
thof as shall not have been sold or disposed of as next
hinafter mentd, to or for the benefit of the sd C., and her
children or child for the time being in existence, or any one
or more of such objects of this trust to the exclusion of the
others or other of them, and UPON FURTHER TRUST in the
like absolute and uncontrolled discretion from time to time
to sell and dispose of all or any pt of the capital of the sd
trust fund, and to pay or apply the monies arising thfrom
to or for the maintenance, support, advancement, or benefit of
the sd C., and her children or child, or any one or more ex-
clusively of the others or other of them, as the sd trees or
tree shall think proper.

IN WITNESS, &c.

SETTLEMENTS (REAL) (a).

RECITALS.

I. **WHAS** the sd, *settlor*, is seised of, or entled to the [manors, Short recital of absolute title to freeholds, copyholds, and leaseholds, by messuages, lands, tithes, and] hereds specified in the first schedule hto for an este of inheritance in fee simple in pos- sion [subjt to the several charges and incumbrances hinafter mentd as affecting the same hereds, or some pt or pts thof],

(a) See Davidson, *Prec.*, vol. iii. ; *Elph. Introd. Conv.* 377 ; and for a short reference to the recent legislation affecting settlements, see p. 421, note.

The following is a summary of the provisions of the Settled Land Act, 1882, 45 & 46 Vict. c. 38, as they affect the frame of settlements. Provisions of Settled Land Act, 1882, affecting the frame of settle- ments.

The Act applies to all settlements by deed, will, or otherwise, and whether effected by one or several instruments, s. 2 (1), (including settlements by trust for sale, s. 63), of "land," which includes land of any tenure and incorporeal hereditaments and an undivided share, s. 2 (10) ; and the Act cannot be excluded or controlled by the settlement (s. 51).

The powers of the Act are vested in the tenant for life as defined by s. 2 (5), namely, the person beneficially entitled to the possession or receipt of the rents and profits for his life ; and any other limited owner as defined by s. 58 ; namely, 1. A tenant in tail ; 2. A tenant in fee simple, subject to an execu- tory limitation or gift over in any event ; 3. A person entitled to a base fee ; 4. A tenant for years determinable on life not holding merely under a lease at a rent ; 5. A tenant for the life of another, not holding merely under a lease at a rent ; 6. A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease during the life or to be defeated by an executory gift over, or is subject to a trust for accumulation ; 7. A tenant in tail after possibility of issue extinct ; 8. A tenant by the curtesy ; 9. A person entitled to the rents and profits under a trust for payment thereof to him during his own or any other life whether subject to expenses of manage- ment or not (see *Re Jones*, *Weekly Notes*, 1883, 103), or until sale of the land, or until forfeiture of his interest on bankruptcy or other event. Act applies to all settle- ments of real estate. Powers vested in tenant for life, or other limited owner.

Where there are two or more persons entitled concurrently as tenants in common or joint tenants, or for other concurrent estates or interests, they owners.

reference to and the [messuages, lands, and] hereds specified in the second schedule hto for an este of inheritance to him and his hrs

together constitute the tenant for life, ss. 2 (6), and (as to settlements by trust for sale) s. 63.

Undivided shares. Where the settlement comprises an undivided share, or where under the settlement the land has come to be held in undivided shares, the tenant for life of an undivided share may join in the exercise of the powers of the Act with the owner or person having power of disposition over any other share.

Effect of incumbrances. The powers of the tenant for life (which in the Act and the following remarks includes other limited owners having the powers of a tenant for life under s. 58) are not affected by the existence of incumbrances on the settled land, or on his estate or interest therein, whether created by the settlement or otherwise, s. 2 (7), and s. 50 (1 and 4); *e.g.*, a mortgage, or a charge of pin-money, jointure, or portions under the same or a prior settlement, and a term for securing it (see *Re Jones*, Weekly Notes, 1883, 103).

Tenant for life infant. Where the tenant for life is an infant, the powers of the Act may by s. 60 be exercised on his behalf by the "trustees of the settlement" (as defined by the Act, see *infra*), and if there are none, then by persons appointed by the Court (see as to this Vol. I., p. 839, note). As this clause extends to the case where "an infant would if of full age be a tenant for life," under the Act, there appears to be no room for the doubt there suggested as to the effect of the express or statutory minority clause.

Tenant for life married woman. In the case of the tenant for life being a married woman, any estate given to her by a future settlement will, whether so expressed or not, be her separate property under the Married Women's Property Act, 1882, s. 2 (as to which, see p. 439, note), and she may exercise the powers as a *feme sole*; and a restraint on anticipation will be no impediment, s. 61 (6).

Tenant for life lunatic. Where the tenant for life is a lunatic so found by inquisition the powers are exercisable by the committee of the estate under an order in lunacy (s. 62). The Act is defective in making no provision for the case of a lunatic not so found.

Powers given to beneficial owner. It will be observed that the powers of the Act are only given to the beneficial owner, and not to mere trustees, except where they are empowered to act on behalf of an infant.

Act of general application. The definition of a tenant for life, and persons having the powers of one, in ss. 2 and 58 are sufficiently comprehensive to cover all ordinary cases; and the Act clearly applies whether the estate of the tenant for life is legal or equitable, and it also appears to exclude the application of the case of *Taylor v. Taylor*, L. R. 20 Eq. 297, 3 Ch. D. 145, decided under the Settled Estates Act (see *Re Jones*, Weekly Notes, 1883, 103). But there may be a doubt (see Vol. I., p. 836 note), whether if a mortgagee or the trustees (*e.g.* of a term) should enter into the actual possession or receipt of the rents, the tenant for life would not cease to be such within the definition in the Act, and there is a question (also suggested Vol. I., p. 836, note), whether in the case of a life estate determinable on bankruptcy, &c., with a discretionary power for the application of the rents after forfeiture of the life estate for the benefit of the

according to the customs of the several manors of which the same resp'y are holden [subjt, &c., *as above*], and is

original tenant for life and his wife and children or other objects, the statutory power would be suspended after such forfeiture, or whether the objects for the time being of the discretionary trust collectively might not be deemed concurrent owners within s. 2 (6); even though the trust includes a power to accumulate the rents; see s. 58 (1) (vi.).

The tenant for life is invested with very large powers for the following purposes:—1. Of selling the settled land or any easement or right of any kind over or in relation to the same (s. 3, i.); 2. Of enfranchising freehold or copyhold land held of a settled manor (s. 3, ii.); 3. Of exchange (s. 3, iii.); 4. Of partition (s. 3, iv.) (see also as to these powers ss. 4, 5, 17 and *infra*); 5. Of making leases or grants for any term not exceeding for a building lease 99 years, for a mining lease 60 years, and for any other lease 21 years (s. 6), subject to a restriction as to the right of the tenant for life to the rent under a mining lease (s. 11); (see also as to these powers, ss. 7, 8, 9, 11, 12, 17 and *infra*); 6. Under an order of the Court, but not otherwise, of making leases or grants for building or mining purposes for longer terms, or in perpetuity (s. 10); 7. Of accepting surrenders of leases; 8. Of granting licences to copyholders to lease their tenements (s. 14); 9. Of appropriating and laying out land for streets, open spaces, &c. (s. 16); 10. Of raising money required for enfranchisement, or equality of exchange or partition by mortgage (s. 18); 11. Of executing improvements subject to the approval of the trustees or the Court, and to restrictions as to obtaining a certificate of the Land Commissioners, or an engineer, or surveyor, or otherwise (s. 26).

See further as to the details of the above powers the notes *infra*.

Power is also given to a tenant for life impeachable for waste to cut and sell timber with the consent of trustees or the Court, three-fourths of the proceeds being applicable as capital (s. 35); and of selling heirlooms with the sanction of the Court (s. 37).

The tenant for life is also invested with full powers of entering into contracts for any of the purposes of the Act, which are to be binding on and enforceable by and against his successors in title; and may be varied or rescinded by him or his successors (s. 31).

But "the principal mansion house and the demesnes thereof and other lands usually occupied therewith" are not to be sold or leased without the consent of the trustees of the settlement, as defined by the Act (see *infra*), or an order of the Court (s. 15). As to the meaning of "mansion house" &c., see Vol. I., p. 837, note.

The tenant for life is by s. 20 (see also s. 55) invested with full power to execute conveyances, &c., to effectuate a sale, exchange, partition, lease, or mortgage, or to create an easement sold or leased, "for the estate or interest, the subject of the settlement, or any less interest," including power to convey copyhold or customary or leasehold land vested in trustees, and so as in the case of copyhold to pass the right to admittance without a surrender (s. 20, (3)). See as to this Vol. I., p. 844, note. The statutory conveyance, &c., has

possessed of, or entitled to, the [messuages, lands, and] hereditaments specified in the third schedule hereto for the respective residues of

Investments of capital money.

by s. 20 (2) an operation similar to that of a conveyance, &c., under an ordinary power in a settlement, so as to overreach all the estates, charges, and powers of charging subsisting under the settlement, other than mortgages or charges actually raised, and leases, &c.

Capital money arising under the Act (on a sale, exchange, partition, or mortgage, or a fine taken on the grant of a lease) is by s. 22 (1) to be paid at the option of the tenant for life either to the trustees of the settlement (whose receipt is a good discharge (s. 40), but not to less than two unless authorised by the settlement, s. 39), or into court, and is by s. 22 (2), (3) to be invested or applied if paid to the trustees according to the direction of the tenant for life, and if paid into court on his application; so as to give him complete control over the reinvestment. The investments authorised by the Act comprise all those usually provided for by settlements, with the addition of any other investments in which money produced by a sale under a power in the settlement is applicable thereunder, see s. 21 and *infra*.

Extension of powers of investment in settlement.

By s. 33, where under a settlement money is in the hands of trustees and is liable to be laid out in the purchase of land, the trustees, in addition to any other powers of investment given by the settlement, may, at the option of the tenant for life, invest or apply it as capital money under the Act. The effect of this clause, coupled with ss. 21 & 22, appears to be in all cases of settlements of land, the proceeds of which are liable to be reinvested in land, to amalgamate the statutory powers of investment with those contained in the settlement as to sale monies, as well as to give the tenant for life the control over the investment, so as to render it practically immaterial from which source the money arises. The word "settlement" in s. 33 appears to mean a settlement of "land" according to the definition in s. 2 (1), and s. 63, so that the section does not apply to a settlement of personalty with a power or trust to invest in land; but the contrary appears to have been held in *Re Mackenzie*, Weekly Notes, 1883, 111.

As to the trustees.

By s. 2 (8), the persons, if any, who are for the time being under the settlement trustees with power of sale of the land, or with power of consent to or approval of the exercise of such power, or if there are no such trustees, then the persons who are by the settlement declared to be trustees thereof for the purposes of the Act are to be the trustees for those purposes; and see the corresponding provision in the case of settlements by trust for sale in s. 63 (1). This definition of the trustees is of course intended to meet the common case of a settlement with more than one set of trustees. By s. 39 (2) the provisions of the Act referring to the trustees apply to the surviving or continuing trustees or trustee for the time being, except that capital money under the Act is not to be paid to fewer than two trustees unless authorised by the settlement in the case of capital money thereunder.

Appointment of trustees by Court.

By s. 38, if there are at any time no trustees within the definition of the Act, or where it is expedient for purposes of the Act that new trustees be appointed, the Court is empowered to appoint trustees, who, and the survivors and survivor of them while continuing to be trustees or trustee, are for

the terms granted by the several leases specified in such schedule subj't to the rents, covenants, and condons reserved

the purposes of the Act to be the trustees or trustee ; as to the appointment of trustees by the Court, see *Re Walker*, W. N. 1883, 104, Vol. I., p. 838, note.

The Act makes the receipt in writing of the trustees (or where one trustee is empowered to act, of one trustee) or of the personal representative of a surviving or continuing trustee, an effectual discharge, and a mortgagee or other person advancing money is not concerned to see that it is wanted or that no more than is wanted is raised.

The Act also contains full provisions for the protection and reimbursement of the trustees, and for exonerating them from all responsibility for anything done under it, ss. 41 to 43 ; and a power to the Court to determine matters in difference between the tenant for life and the trustees, s. 44.

The tenant for life is in the exercise of his statutory powers to have regard to the interests of all parties interested and to be deemed to be a trustee for those parties (s. 53), but purchasers and others dealing *bond fide* are protected (s. 54).

The Act contains a requirement (s. 45) that the tenant for life, before making a sale, exchange, partition, lease, mortgage, or charge under the Act, or a contract for the same, shall give one calendar month's notice by registered letter to each of the trustees, and also to their solicitor, if any is known to him, with a proviso that "at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement," but a person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of such notice. This requirement was no doubt made in order that the trustees might be able to intervene in case of a doubt as to the propriety of any intended sale or disposition. But the clause, according to its strict letter, goes further than the case requires, in making the notice imperative in all cases, although the tenant for life and the trustees are acting by the same solicitor, and the latter are consenting parties.

By s. 50 the tenant for life cannot assign, or release, or contract not to exercise his powers under the Act, and they remain exercisable notwithstanding alienation partial or even total of his life estate, or bankruptcy, &c. ; but he cannot exercise them to the prejudice of an assignee for value or of incumbrancer on his life estate without the latter's consent, with an exception as to rack rent leases.

Sections 51 and 52 contain provisions invalidating any prohibition, clause of forfeiture, or other provision in a settlement purporting or tending to prevent the exercise by a tenant for life of his powers under the Act, which cannot therefore be excluded or controlled by the settlement.

By s. 56 the Act is not to affect any power subsisting under the settlement, or by statute, exercisable by a tenant for life, or by trustees with his consent, or on his request, or by his direction or otherwise, and the powers of the Act are to be cumulative. But in case of conflict between the settlement and the Act "relative to any matter in respect whereof the tenant for life exercises or intends to exercise any power under the Act," the provisions of the Act are to

Receipt of trustees.

Protection and reimbursement of trustees.

Tenant for life exercising powers to be a trustee.

Notices

Powers incapable of being released, &c.

Act cannot be excluded.

As to concurrent powers in settlement.

by and contd in such respive leases [and subjt, &c., *as above*].

prevail ; and accordingly, notwithstanding anything in the settlement, the consent of the tenant for life is to be necessary to the exercise by the trustees or other person of any power conferred by the settlement exercisable for any purpose provided for in the Act. As to the necessity thus imposed where express powers are given by the settlement for the same purposes as the statutory powers, but are vested in different persons, of obtaining the consent of the donee of the statutory powers to their exercise, see *Re Duke of Newcastle*, Weekly Notes, 1883, 99.

As to
conferring
additional
powers by
settlement.

By s. 57, nothing in the Act is to preclude a settlor from conferring on the tenant for life or the trustees any powers additional to or larger than those conferred by the Act ; and any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in the Act, operate and be exercisable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by the Act, unless a contrary intention is expressed in the settlement. Where, therefore, the powers given to the tenant for life are extended by the settlement, the clause extending them will take effect as if it had been contained in the Act, unless the contrary is expressed ; but an express declaration that it is intended to operate according to this clause, should be added to prevent doubt. This is a very useful provision : thus, a power given to the tenant for life to grant leases for longer terms than those specified in s. 6, would operate as if such leases had been authorised by that section, so as to incorporate all the subsidiary provisions of the Act relating to leases, and leases granted under this power would take effect under s. 20 as statutory conveyances, and not by appointment of the use as in the case of ordinary express powers.

As to
extending
powers of
trustees.

The words of the same section having reference to extended powers given to the *trustees*, must apparently be read in connection with the clauses in the Act giving powers or discretions to the trustees (which are few in number : see ss. 15, 22 (2), 26), and must have a restricted operation. This provision of course has no reference to the power given to the trustees by s. 60, of exercising the statutory powers on behalf of an infant tenant for life, since in that case they are acting as a tenant for life.

As to
inserting
express
powers.

The powers given by the Act to tenants for life being fully as comprehensive and beneficial, and in many respects much more so, than those commonly inserted in settlements, there is in general no advantage whatever in inserting express powers for the like purposes, whether given to the tenant for life or other donee of the statutory powers, or to the trustees or other persons ; in which case, by s. 56, they could only be exercised with the consent of the donee of the statutory powers ; and the proper course, except under very special circumstances, undoubtedly is to omit the powers altogether. There may be cases in which it may be more convenient that sales and other transactions should be effected by the trustees, the tenant for life merely joining as a consenting party ; but it is of course to the advantage of the trustees that the statutory powers should be used, as they are in that case relieved by s. 42 of all responsibility.

II. AND WHAS the hereds hby settled are subj to a jointure rent-charge of £—— a year, which will become payable to —— in case she shall survive her husband [and to powers of distress and entry, and a term of —— years limited to trees, for securing the same], under or by virtue of an indre, dated, &c., and expd, &c.; *or*, “ the will of ——, dated, &c., and proved, &c.” [and a deed poll of appointmt, under the hand and seal of ——, dated, &c.], and are also under or by virtue of the same indre, *or*, “ will ” [and deed poll], subj to and charged with such sum, not exceeding £——, as may in the event become raisable for the portions or advancement of the younger children or child of the sd —— by the sd ——, and to such annual sums as may become raisable by way of interest on the sd portions for the maintenance and education of such younger children or child, and which sum and interest are raisable under the trusts of a term of —— years limited to trees for that ppose by the sd indre of sttlement *or*, “ will,” [and deed poll].

That premises are subject to jointure and portions.

III. AND WHAS the sd hereds intd to be hby settled are subj to the several leases and tenancies mentd in the —— and —— schedules hto as affecting the same resply.

That premises are subject to leases.

But more special and elaborate powers than those given by the Act will sometimes be required by the circumstances of the estate or the custom of the district, *e.g.*, a power to grant leases for longer terms, or to make grants in fee on chief rent for building without the sanction of the Court; a power to grant reversionary leases, a power to sell for fee farm rents, a power to expend money in improvements without the restrictions imposed by the Acts, or an extension of the powers of investment. But any such enlarged power may probably be in general given by a short clause extending and incorporating the provisions of the Act with the aid of s. 57: see above.

As to extending powers of Act.

The following provisions should also usually be inserted with reference to the Act, if according to the intention—namely, that the mansion house, &c., may be sold, exchanged, or leased without the consent of the trustee or the Court (see s. 15); enabling heirlooms to be sold without the sanction of the Court (see s. 37); that the whole of the rent reserved on mining leases shall be treated as income (see s. 11); that the trustees, or, if there is more than one set, the general trustees, shall be trustees for the purposes of the Act (see s. 2 (8)); and enabling a sole trustee to act for such purposes (see ss. 39, 40, 45); and as the requirement in s. 45 as to giving notice of the intention to exercise the statutory powers is productive of much inconvenience in practice, the necessity for this should be dispensed with, at any rate as to leases.

Provisions to be inserted with reference to Act.

That premises are subject to mortgages.

IV. AND WHAS the hereds intd to be hby settled, or some pt or pts thof, are subjt to the several mtge debts mentd in the first column of the second schedule hto, and the interest thereon resply, which respive mtge debts and interest are severally secured by the respive indres mentd in the second column of the sd second schedule hto, and are now vested in the several psons named in the third column of the same schedule.

Recital of strict settlement where part of the property has been sold, &c.

V. WHAS, by an indre, dated, &c., and expd, &c. (being a settlemnt executed in conson of the marre, which was shortly afterwards solemnized, of the sd A. and K. his wife), the hereds described in the first schedule hto were, with other freehd hereds, assured and limited after the sd marre, subjt to certain uses and charges which have failed or determined or become satisfied, to the use of the sd L. and M. for the term of 99 years, upon the usual trusts for securing the annual sum of £—— by way of pin-money to the sd K., with remr to the use of the sd A. and his assigns during his life, with remr to the use that, if the sd K. should survive the sd A., she should thenceforth during her life receive a rent-charge of £——, by way of jointure, [secured by the usual powers of distress and entry, with remr to the use of the sd N. and O. for the term of 200 years, upon the usual trusts for further securing the sd jointure rent-charge], with remr to the use of the sd P. and Q., for the term of 1000 years, upon the usual trusts for securing for the portions of the younger child or children of the sd marre the sum following, that is to say, if there should be but one such younger child, the sum of £——, and if there should be two or more such younger children, the sum of £——, with provons for the maintenance, education, and advancemt of such younger child or children, with remr to the use of the first son of the sd A. by the sd K. in tail male, with remrs over; And by the same indre the sd A. covenanted, if the sd marre should take place, to surrender the hereds specified in the second schedule hto, togr with other copyhd hereds, to the use of the sd R. and S., their hrs and assigns, according to the cus-

toms of the several manors of which the same were resply holden, upon trusts, and with and subjt to powers and provons corresponding with the uses, trusts, powers, and provons thinbefore limited and decl'd concerning the freehd hereds thby settled, or as near thto as the nature of the ppty would admit, but not so as to increase or multiply charges or powers of charging: And by the same indre the sd A. assigned the hereds comprd in or expd to be demised by the several indres of lease specified in the third schedule hto, togr with other leasehd hereds, unto the sd R. and S., their exs, ads, and assigns, for the respive residues then unexpired of the several terms of years granted by the sd respive indres of lease, subjt to the paymt of the rents and the performance and observance of the covenants and agreemts on the pt of the respive lessees and condons by and in the same indres resply reserved and contd, to be held after the sd marre upon trusts, and with and subjt to powers and provons corresponding with the uses, trusts, powers, and provons thinbefore limited and decl'd concerning the freehd hereds thby settled, or as near thto as the nature of the premes would admit, but not so as to increase or multiply charges, or powers of charging, and so that the sd leasehd premes should not vest in any pson thby made tenant in tail male or in tail by pchase, unless he or she should attain the age of twenty-one years, but on his or her death under that age should devolve as if the same had formed pt of the freehds of inheritance thby settled.

VI. WHAS by an indre, dated, &c., and expd to be made, &c., and perfected by enrolmt as a disentailing assurance, the freehd hereds intd to be hby settled were granted or assured by the sd, *tenant for life*, and the sd, *tenant in tail*, with the consent of the sd, *tenant for life*, unto the sd — and his hrs, subjt [to the charges and incumbrances hinafter mentd as affecting the same resply, and] to the uses, estes, and powers, limited, decl'd, or created by the sd indre of settlemnt, with respect to the freehd hereds thby settled, and then subsisting, which preceded the este in tail [male] of

Disentail-
ing assur-
ance of
freeholds
prepara-
tory to re-
settlement.

the sd, *tenant in tail*, other than the este thby limited to the sd, *tenant for life*, during his life, and to the uses and estes limited or created, or to be limited or created, in exercise of such powers, but freed and discharged from all estes in tail [male or in tail] of the sd, *tenant in tail*, and all estes, rights, interests, and powers to take effect after the determination, or in defeasance of such este or estes in tail [male or in tail] to such uses, for such estes, upon such trusts, and with and subjt to such powers and provons, as the sd, *tenant for life*, and, *tenant in tail*, should at any time or times thereafter, by any deed or deeds, with or without power of revocation and new appointmt, jointly direct or appoint, and in default of such appointmt, to the uses therein mentd.

Short
recital of
effect of
settlement
and disen-
tailing
assurance,
comprising
freeholds
and copy-
holds.

VII. WHAS by the effect of an indre of settlemnt dated, &c., and of an indre dated, &c., and perfected by enrolmt as a disentailing assurance, and of certain deeds, events, matters and things, recited or implied in such indres or one of them, and of the exercise of certain powers in the sd indre of settlemnt contd, the hereds of freehd tenure hby settled now stand limited [subjt to the charges and incumbrances hinafter mentd, as affecting the same premes respby, and] subjt to the uses and estes limited or created by the sd indre of settlemnt, or under the powers therein contd, which preceded the este in tail male thby limited to the sd —, and which are now subsisting or capable of taking effect, and to the powers annexed to such preceding estes, To the use, *here set out limitations of disentailing deed*, and the hereds of copyhd tenure hby settled now stand settled [subjt to the charges and incumbrances hinafter mentd as affecting the same respby] upon trusts and subjt to powers and provons corresponding with the uses, trusts, powers, and provons to which the sd freehd premes are subjt; AND WHAS the legal este of the sd copyhd hereds is now vested in the sd K. and L., the present trees of the sd indre of settlemnt.

Short

VIII. AND WHAS the leasehd hereds specified in the —

schedule hto are vested in the sd M. and N., *the trustees of the strict settlement*, for the respive residues of the several terms granted by the several leases specified in such schedule, subjt to the rents, covenants, and condons reserved by and contd in such respive leases [and subjt to the several charges or incumbrances hinafter mentd as affecting the same hereds, or some pt or pts thof resply], upon, with, and subjt to trusts, powers, and provons corresponding as nearly as the nature of the ppty admits with the uses, trusts, powers, and provons to, upon, with, and subjt to which the sd freehd hereds stood limited and settled under or by virtue of the sd indre of settlemt, immediately before the execution of the sd indre of, &c., *the disentailing assurance*, and which preceded the este in tail [male] by the sd settlemt limited to the sd B., and subjt thto in trust for the sd B. absolutely.

IX. AND WHAS there have been issue of the marre of the sd A. and B. — children only, viz., the sd —, the eldest son, and — younger children, — of whom have attained their respive ages of twenty-one years, and the remaining — are still infants and unmarried.

X. AND WHAS divers sales and exchanges [and partitions] of portions of the freehd, copyhd, and leasehd estes and hereds, and enfranchisemts of copyhd tenemts holden of the several manors originally comprd in or which have since become subjt to the uses and trusts of the sd indre of settlemt, and enclosures of common and waste lands, have from time to time taken place since the date of the sd indre of settlemt under the powers therein contd, or under statutory powers or authorities, and divers pchases of hereds and investmts have from time to time been made with capital monies received upon such sales, exchanges [partitions], and enfranchisemts or otherwise arising under the sd settlemt or under statutory powers, by means whof divers portions of the hereds originally comprd in, or which have since become subjt to the uses and trusts of the sd indre of settlemt have been disposed of or parted with; And the

recital of
title to
leaseholds
understrict
settlement.

State of
family.

Short
recital of
interim
dealings
with the
settled
property.

hereds so pchased or received in exchange [or on partition], or allotted on such enclosures, and the stocks, funds, and secs so pchased, and which resply remain undisposed of, are specified in the second schedule hto, and the same resply became, and were immediately before the execution of the indre next hinafter recited, *disentailing assurance*, subjt to such of the uses and trusts limited and decl'd by the sd indre of settlemt, or in the exercise of the powers thof, as were applicable thto, regard being had to the nature thof resply: AND WHAS the legal este of such of the last-mentd hereds as are of copyhd or leasehd tenure is now vested in the sd X. and Y., the present trees of the sd indre of settlemt, And the sd stocks, funds, and secs are now standing in the names or under the legal control of the sd X. and Y.

CLAUSES.

Limitation
to joint
appoint-
ment of
father and
son.

I. TO SUCH USES, upon such trusts, and with and subjt to such powers and provons as the sd, *father*, and, *son*, shall from time to time by any deed or deeds, revocable or irrevocable, appoint: AND IN DEFAULT of, and subjt to such appointmt, &c.

Limitation
of a term.

II. TO THE USE of the sd, *trustees*, their exs, ads, and assigns, for the term of — years, to commence from —, without impeachmt of waste, upon the trusts, and with and subjt to the powers and provons hinafter decl'd and contd concerning the same, and from and after the expiration or determination of the sd term, and in the meantime subjt thto, and to the trusts thof, TO THE USE, &c., *or, for brevity*, “TO THE USE of the sd, *trustees*, for the term of — years from —, without impeachmt of waste, upon the trusts hinafter decl'd, and subjt thto, TO THE USE, &c.”

III. To THE USE of (b) the sd — and his assigns during his life [without impeachmt of waste (c)] (d), and from and after his decease, To THE USE, &c. Limitation of a life estate.

(b) If the legal estate is in the trustees, say, "IN TRUST for."

(c) If desired, add, here "other than wilful or permissive waste in pulling down houses, or buildings, or suffering the same to go to decay, and except waste in cutting timber planted or left standing for ornamt or shelter, or any timber, or timber-like trees, otherwise than in a due and proper course of managemt [and with the consent in writing of the sd, trustees, or the survors or survivor of them, or the exs or ads of such survivor, or other the trees or tree for the time being of these presents, which consent it shall be wholly in the discretion of the sd trees or tree to give or withhold without incurring any responsibility in that behalf]." Restriction as to waste.
In the subsequent limitations without impeachment of waste, add, "save as aforesaid."

For a mining estate the following may be added if so intended; "and so that he and they shall have full liberty to work, get, and dispose of all or any of the mines and minerals hby settled, and to exercise and use all such powers, rights, and means for that ppose as might be conferred on a lessee of the sd mines and minerals." Provision as to mines.

Where there are several life estates it may be better to declare that they are to be without impeachment of waste, if so intended, by a separate clause.

As to the law of waste, see 3 Dav. Prec., pp. 279 *et seqq.*; Tudor's Lead. Cas. Law of waste.
Conv., Notes to Lewis Bowles' Case; The Judicature Act, 1873, s. 25 (3), as to equitable waste; the Settled Land Act, 1882, s. 35, enabling a tenant for life impeachable for waste in respect of timber with the consent of the trustees or the Court to cut and sell timber ripe and fit for cutting, and to retain one-fourth of the proceeds as rents and profits, the other three-fourths being set aside as capital; s. 11 of the same Act directing that where the tenant for life is impeachable for waste three-fourths, and where he is not one-fourth, of the rent reserved in a mining lease shall, unless a contrary intention is expressed in the settlement, be set aside as capital (see *Re Duke of Newcastle*, W. N., 1883, 99); and s. 28 of the same Act, as to the maintenance and repair of improvements executed under the Act.

(d) Where the powers annexed to the life estate in a prior settlement are to be kept on foot, insert here, "In restoration and by way of

Limitation
of life
estate to
married
woman
without
anticipa-
tion (*f*).

iv. To THE USE of (*e*) the sd — and her assigns, during her life [without impeachmt of waste (*g*)] but so nevertheless that during the sd intd, or, “her present [or any future]” coverture she shall not have power to dispose of or charge the rents and profits of the sd premes by way of anticipation, and from and after her decease, To THE USE of, &c.

Life inter-
est deter-
minable on
bankruptcy
or aliena-
tion.
Variations
for a life
interest in
remainder
(*h*).

v. To THE USE of the sd, *trustees*, their exs, ads, and assigns, during the life of the sd K., [without impeachmt of waste.] UPON TRUST that [*for a tenant for life in remainder say, if at the time of this present trust taking effect in possion the sd K. shall not be or have been bankrupt, and shall not have alienated or charged or affected to alienate or charge the life este hby given to him in the sd hereds and premes hby settled, and if no other event shall have happened whereby such life este or any pt thof would, if belonging absolutely to him, have become vested in or charged in favour of some other pson or psons*] the sd, *trustees*, or the survivor of them, or the exs or ads of such survivor, shall allow the sd K. to enter into and remain in the possion or rect of the rents and profits of the sd premes [including the produce of timber and minerals], during his life or until he shall become bankrupt, or alienate or charge or affect to alienate or charge his sd life este in the sd premes, or some pt thof, or until some other event

confirmation of the life este of the sd —, limited to him by the sd indre of settlemt of the — day of —.”

(*e*) If the legal estate is in the trustees, say, “IN TRUST for.”

As to
estates
given to
married
women.

(*f*) That every interest given by the settlement to a married woman, whether married before or after the commencement of the Married Women's Property Act, 1882, will be her separate estate without the necessity for any express words to that effect, and as to imposing a restraint on anticipation during coverture, see p. 439, note. The practice before the Act in giving a life estate in land, or a rentcharge to a married woman during the coverture was to limit it to trustees in trust for her separate use, so as to exclude the husband from taking the legal estate, but this is now unnecessary, and a legal life estate or rentcharge may be limited to a married woman without trustees in the same way as to a man.

(*g*) See note (*c*) on last page.

(*h*) See pp. 441, 442, notes.

shall happen whby such life este or some pt thof would, if belonging absolutely to him, become vested in or charged in favour of some other pson or psons : PROVD ALWAYS, and it is hby agrd that in the event of the [failure or] determination of the sd life este of the sd K., under the trusts lastly hinbefore contd, all the powers annexed thto shall cease to be exerciseable by him after [or, shall continue to be exerciseable by him notwithstanding] such [failure or] determination [other than and except, *specify any power to be excepted*] (a).

VI. AND IT IS HBY AGD and decl'd that the sd trees or tree shall, after the [failure or] determination during the lifetime of the sd K. of his sd life este, [but without prejudice to the uses or estes hby limited or to be limited by virtue of the powers herein contd, having priority to the este hby limited to the sd, *trustees*, during the life of the sd K.,] enter into the possion or rect of the rents and profits of the hereds hby settled, and shall during the remr of the life of the sd K. continue in such possion or rect, and manage or superintend the managemt of the same premes with the same powers in that behalf as if they or he were in such possion or rect during the minority of an infant tenant in tail [male], [and shall keep up and maintain the mansion house, grounds, and park at — in a proper state for occupation], and shall out of the rents and profits of the sd premes [including the produce of timber and minerals], pay the expenses incurred in such managemt [and keeping up], or otherwise in respect of the premes, and any annual sums and the interest on any principal sum charged on the same premes or any pt thof, and shall during the remr of the life of the sd K., or such shorter period or periods, either continuous or discontinuous,

Discretionary trust for application of income after bankruptcy, &c., of tenant for life for the benefit of him and his family (b).

(a) The question whether any and what powers annexed to the life estate should be preserved in this case must of course depend on the circumstances of each case. The powers of the tenant for life under the Settled Land Act would of course cease after the forfeiture of his estate; as to the effect of the discretionary trust in the next form as regards the statutory powers, see p. 542, note.

(b) See *ante*, pp. 442, 444, notes.

as the sd trees or tree shall in their or his absolute discretion think fit, [delegate either expressly or by implication, without being responsible for loss, and upon such terms as they or he shall think fit, all or any of the powers of managemt lastly hinbefore contd to and] pay all or any pt of the net rents and profits of the sd premes, after making the paymts hinbefore directed, unto or apply the same for the maintenance or personal support or benefit of all or any one or more to the exclusion of the others or other of the following psons, namely, the sd K. and his wife, if any, and his children or remoter issue for the time being in existence [whether by his now intd or any after taken wife, and] whether minors or adults, and the other psons for the time being interested in remr whether absolutely, contingently, or otherwise in the premes hby settled, in such mner as the sd trees or tree shall in their or his absolute discretion think proper, and shall during such period and at such discretion as afsd, permit all or any of such psons personally to occupy all or any of the sd premes, and, subjt to the discretionary trust or power lastly hinbefore contd, shall pay or apply the surplus of the sd rents and profits to the pson or psons or for the pposes to or upon which the net rents and profits of the sd premes hby settled would be payable or applicable if the sd K. were dead, or shall permit the sd premes to be occupied or enjoyed by such pson or psons.

Trust of
income
after bank-
ruptcy, &c.,
of tenant
for life
when there
is no dis-
cretionary
trust in his
favour.

VII. AND IT IS HBY AGRD and decl'd, that after the [failure or] determination during the life of sd K. of his sd life este, the sd trees or tree shall during the remr of his life [but without prejudice to the uses or estes hby limited or to be limited by virtue of the powers herein contd, having priority to the este hby limited to the sd, *trustees*, during the life of the sd K.,] pay or apply the net rents and profits of the sd hereds and premes to the pson or psons or for the pposes to or for which the same would be payable or applicable if the sd K. were dead, or shall permit such pson or psons to occupy and enjoy the sd premes.

General

VIII. PROVD ALWAYS and it is hby agrd, that if any pson

hby made tenant for life of the sd premes hby settled, shall become bankrupt or assign or charge his life este in all or any pt of the sd premes or any pt of such life este or affect so to do, or if any other event shall happen whereby if such life este belonged to him absolutely he would be wholly or partially deprived of the personal enjoymt thof, then, *if the life estate is not to be protected, say*, "such pson shall during the remr of his life, but without prejudice to the uses, estes, or powers preceding or over-riding his life este, and the uses and estes limited or created in exercise of such powers, stand seized of all the sd premes hby settled in trust for the pson or psons who would for the time being be entled thto, if he were dead, and in such case all powers annexed to his life este shall cease to be exerciseable;" *if the life estate is to be protected, say*, "the beneficial right of such pson to the possion or rect of the rents and profits of all the sd premes hby settled during his life shall cease and determine as if he were dead, but the legal este in the sd premes shall remain subsisting in him during the remr of his life as a bare legal este, without prejudice nevertheless to the future exercise of the powers hby given to him as such tenant for life [other than and except, *specify any powers to be excepted,*] and the sd trees or tree shall take possion or enter into the rect of the rents and profits of the sd premes hby settled, and shall during the remr of the life of the pson whose beneficial enjoymt of the sd premes shall have ceased as afsd, continue in such possion or rect, and manage, &c., *continue as in form vi., mutatis mutandis.*

IX. To THE USE that the sd, son, and his assigns, shall during the joint lives of himself and the sd, father, receive the yearly rent-charge of £—— to commence from the —— day of —— [the sd intd marre], and to be charged upon and issuing out of all the sd hereds and premes hby settled, and to be considered as accruing from day to day, but to be

proviso determining tenancies for life on bankruptcy &c. (c).

Limitation of legal rent-charge to son during joint lives of himself and father (d).

(c) See p. 441, note. This form is adapted to legal tenancies for life; but it is generally better in such a case to vest the legal estate in the trustees.

(d) The Conv. Act, 1881, s. 44, confers on a person entitled to receive an annual Powers to

payable quarterly, without any deduction [except for succession duty] on, &c., *specify days, or*, "on the usual quarter days," the first of such paymts to be made on the — day of — next [at the end of three calendar months after the sd intd marre], if the sd son shall then be living: AND subj and charged as afsd, TO THE USE, &c.

Limitation
of legal
rent-charge
to wife
without
anticipa-
tion.
Variation
for pin-
money (e).

x. TO THE USE that the sd, *wife*, and her assigns shall during her life [the sd, *wife*, shall during the joint lives of the sd, *husband*, and, *wife*,] receive the yearly rent-charge of £—, commencing from the sd intd marre [the yearly rent-charge following, that is to say, so long as the sd, *husband's father*, shall be living, the yearly sum of £— commencing from

secure a
rent-charge
under the
Conv. Act,
1881.

sum, payable half-yearly or otherwise, out of any land or the rents and profits thereof, the following remedies for the recovery thereof as far as such remedies might have been conferred "by the instrument under which the annual sum arises but not further," unless a contrary intention is expressed in, and subject to the terms and provisions of "that instrument;" and the enactment only applies where "that instrument" came into operation after 1881; namely, 1. the usual power of distress after twenty-one days; 2. the usual power of entry and receipt of the rents and profits after forty days; and 3. in the like case a power to demise the land, or any part thereof, to a trustee or trustees for a term, upon the usual trusts for raising the same, and all arrears and costs.

These remedies in all cases to which they apply appear to be amply sufficient, and to render the insertion of express powers for the like purposes quite unnecessary. In a settlement or will creating rent-charges, these powers may therefore be omitted; but where the rent-charge is appointed under a power conferred by a prior instrument, it is necessary to consider whether the rent-charge "arises" under the instrument creating the power, or the instrument appointing it. If it is to be considered as arising under the instrument creating the power, and that instrument was before 1882, the Act would not apply; express powers should, therefore, in that case, to prevent question, be inserted in the appointment, so far as the appointor has power to give them. And in case the rent-charge should be considered as "arising under" the appointment, a power of appointing a rent-charge in a future settlement or will should, to prevent question, expressly authorise the donee to give the statutory powers, in order that they may be implied under the Act.

The forms of express powers are here retained, as they will still be required in appointments of rent-charges under powers created prior to 1882; and also possibly in the case of property abroad.

As to the remedy by distress for a rent-charge under 4 Geo. 2, c. 28, s. 5, see *Dodds v. Thompson*, L. R. 1 C. P. 133. As to the power of the Court to sell for raising the arrears of a rent-charge see *Hall v. Hurt*, 2 J. & H. 76.

As to mode (e) The practice hitherto has been to secure the wife's pin-money during the

the sd intd marre, and after his death the yearly sum of £——] to be charged upon and issuing out of all the sd hereds and premes hby settled, and to be considered as accruing from day to day, but to be payable quarterly, without any deduction [except for succession duty] on, &c., *specify days, or*, “on the usual quarter days,” the first of such paymts to be made on such of the sd days as shall happen next after the sd intd marre, but so that [during coverture (*f*)], she shall not have power to anticipate such rent-charge: AND subjt and charged as afsd, TO THE USE, &c.

XI. UPON TRUST that the sd, *trustees*, and the survor of them, and the exs or ads (*g*) of such survor, shall during the life of the sd —, *or*, “during the joint lives of the sd, *husband*, and, *wife*,” by and out of the rents and profits of the same premes, or by the sale of timber or minerals, or by mtge of the same premes, or any of them, or by all or any of the means afsd, raise the yearly sum of £——, commencing from the — day of — [the sd intd marre], to be considered as accruing from day to day, but to be payable quarterly, without any deduction on, &c., *specify days, or*, “on the usual quarter days,” the first of such paymts to be made on the — day of — next [at the end of three calendar months after the sd intd marre], and shall pay the same yearly sum to the sd —, and his assigns, *or*, “to the sd, *wife*, and so that [during coverture (*f*)] she shall not have power to anticipate the same,” and subjt to the paymt of the sd annuity, UPON TRUST, &c.

Trust to raise and pay an annuity when the legal estate is in trustees.

Variation when the annuity is to be paid to wife without anticipation.

XII. TO THE USE that if the sd, *wife*, shall survive the sd, Limitation

joint lives by limiting a term to trustees upon trusts for the raising and payment thereof; but the effect of the Married Women's Property Act, 1882, is to render this machinery altogether unnecessary, and the proper course in future will be to limit the rent-charge direct to the wife, who will be entitled to it, subject to the restraint on anticipation, and to exercise the statutory remedies for the recovery of it, as a *feme sole*; see p. 439, note, p. 557, note (*d*).

(*f*) If the rent-charge is only payable during the joint lives of the husband and wife the words in this bracket will of course be omitted.

(*g*) See p. 462, note (*h*).

of jointure rent-charge to wife. Variation where the rent-charge is to be increased after the death of the husband's father (a).

husband, the sd, *wife*, and her assigns, shall thenceforth during her life receive the yearly rent-charge [following, that is to say, if and so long as the sd, *husband's father*, shall be living, the yearly rent-charge of £—, and from and after his death the yearly rent-charge] of £—, to be in full for her jointure, and in bar of all dower and freebench, and to be charged upon, and issuing out of all the sd hereds and premes hby settled, or, *as the case may be*, and to be considered as accruing from day to day, but to be payable quarterly, without any deduction [except succession duty], the first of such paymts [as to the sd rent-charge of £—] to be made at the end of three calendar months after the death of the sd, *husband*, [if the sd, *wife*, and also the sd, *husband's father*, shall then be living, and as to the sd rent-charge of £—, to be made at the end of three calendar months after the death of the survivor of the sd, *husband*, and, *husband's father*], if the sd, *wife*, shall then be living, and so that the ~~sd~~, *wife*, shall not during her sd intd coverture have power to dispose of or charge such rent-charge [respective rent-charges] by anticipation, AND subjt and charged as afsd, To THE USE, &c.

Power of distress to secure rent-charge. Variations for several rent-charges (a).

XIII. AND TO THE FURTHER USE that if the sd yearly rent-charge [any of the sd yearly rent-charges hinbefore limited, and which shall take effect,] or any pt thof, shall at any time be unpaid for twenty-one days after any of the times hby appointed for the paymt thof, then and so often it shall be lawful for the sd — and his assigns [the pson or psons entled to the same rent-charge] to enter into and distrain upon the sd premes hinbefore charged thwith, or any pt thof, and to dispose according to law of the distress or distresses then and there found, to the intent that thby or otherwise the sd rent-charge so in arrear, and all costs and expenses occasioned by the non-paymt thof, may be fully paid and satisfied.

Power of entry to secure

XIV. AND TO THE FURTHER USE that if the sd rent-charge [any such rent-charge which shall take effect] or any pt thof,

(a) See p. 557, note (d).

shall at any time be unpaid for forty days after any of the times hinfere appointed for the paymt thof, then and so often, although there shall not have been any legal demand made thof, it shall be lawful for the sd — or his assigns [the pson or psons entled to the same rent-charge] to enter into and upon, and to hold the sd premes hinfere charged thwith, or any pt thof, and to receive the rents and profits thof until such rent-charge and the arrears thof due at the time of such entry, or afterwards to become due during his or their being in possession of the same premes, shall thby or

rent-charge.
Variations for several rent-charges (a).

togr with all costs and mt thof, such possion, nt of waste, and subj to the use, &c.

it shall be lawful for the psons for the time being time after he or they nt-charge in possion by premes charged thwith any term of years upon togr with all costs and preparation and execu-

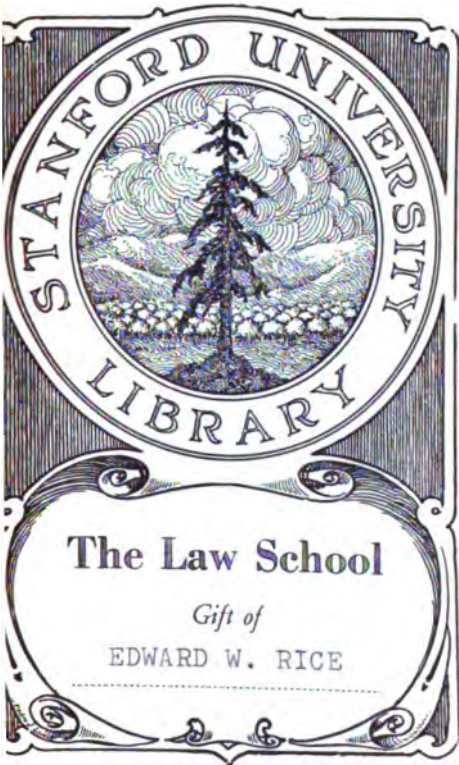
Power to owner of rent-charge to appoint a term to trustees for raising it (a).

— and his assigns shall for recovering and ob- or annual sum of £— conveyancing and Law of psons entld to annual ch that enactmt applies.

Clause giving power for recovery of rent-charge by reference to statute.

it and every other son e sd, wife], successively rding to their respive heir respive bodies, and

Limitation to sons or daughters successively in tail male or general (c).



(a) See note (a), p. 559.

(b) If the legal estate is in the trustees, say, "IN TRUST for."

(c) By the Conv. Act, 1881, s. 51, an estate in fee simple may be limited by enactment in a deed by those words without the word "heirs," and an estate in tail or in Conv.

in default of such issue] [*or*, in tail [male], with remr], To THE USE of (g), &c.

Limitation to daughters as tenants in common in tail male or general, with cross remainders (f).

XVIII. To THE USE of (g) all the daughters of the sd, *husband*, [by the sd, *wife*,] and the hrs [male] of their respive bodies as tenants in common in equal shares: AND IF and so often as there shall be a failure of issue [male] of any such daughter, then, as well as to her original share as to any share or shares which shall have accrued to her, or to the hrs [male] of her body, by virtue of this present limon, To THE USE of (g) the others of such daughters and the hrs [male] of their respive bodies, as tenants in common, in equal shares: AND IF there shall be a failure of issue [male] of all such daughters but one, or if there shall be but one such daughter, then as to the entirety of the same premes, To THE USE of (g) such one or only daughter, and the hrs [male] of her body, and in default of such issue, To THE USE of (g), &c.

The same. Short form (a).

XIX. To THE USE of (g) all the daughters of the sd, *husband*, [by the sd, *wife*,], as tenants in common in tail [male] with cross remrs in tail [male] as to their original and accruing shares between such daughters as tenants in common, and if there shall be but one such daughter, then as to the entirety of the same premes, To THE USE of (g) such one daughter in tail [male] with remr To THE USE of (g), &c.

Limitation to issue as the parents

XX. To THE USE of (g) all or such one or more, exclusively of the others or other of the children or remoter issue

Act, 1881, as to limiting estates in fee or tail.

in tail male or female, by those words, without the words "heirs of the body," or "heirs male, or female, of the body." There is some advantage in point of brevity in using the statutory form instead of the old form in limitations in tail, especially in a limitation to tenants in common in tail with cross remainders. If the statutory form of limitation is used at all, it should be used throughout for uniformity, and in that case each remainder should be introduced by the words "with remainder," instead of "and in default of such issue."

(f) See the last note.

(g) If the legal estate is in the trustees, say, "IN TRUST for."

(a) See note (c) above, and the form in the 4th schedule to the Conv. Act, 1881.

of the sd intd marre, such remoter issue to be born and take vested interests within twenty-one years from the death of the survor of the sd, *husband*, and, *wife* [or to the use of any other pson or psons in trust for such children or child, or issue], for such estes or este, interests or interest, and if more than one, in such shares, and with and subjt to such charges, powers of charging, and other powers, provons, and limons over for the benefit of all or any one or more of such children or issue, and in such mner as the sd, *husband*, and, *wife*, shall by any deed or deeds, revocable or irrevocable, jointly appoint, and in default of and subjt to any such appointmt, then as the survor of them shall in like mner, or by will or codicil, appoint; And in default of and subjt to any appointmt under either of the powers lastly hinbefore contd, To THE USE of (g), &c.

XXI. To THE USE of (g) all the children of the sd, *husband*, [by the sd, *wife*,] their hrs and assigns, or, "in fee simple" (b), as tenants in common in equal shares (c): AND IF and so often as any such child being a son shall die under the age of twenty-one years, or being a daughter shall die under that age and without having been married, then as well as to the original share of the child so dying as to any share or shares which shall have accrued to him or her by virtue of this present limon, To THE USE of (g) the others of such children, their hrs and assigns, or, "in fee simple," as tenants in common in equal shares: AND IF all such children but one shall die, being sons under the age of twenty-one years, or being daughters under that age and

or survivor
appoint.

Limitation
to children
as tenants
in common
in fee, with
accruer on
death un-
der twenty-
one, &c.

(g) If the legal estate is in the trustees, say, "IN TRUST for."

(b) See p. 561, note (c).

(c) This limitation, being a vested remainder subject to be divested on death under twenty-one, &c., is to be preferred to a limitation to such of the children as shall attain twenty-one, &c., which is the usual form in the case of personal estate, notwithstanding that a contingent remainder in the latter form would now be protected, by the Act 40 & 41 Vict. c. 33, from failure. As to contingent remainders to classes, see *Festing v. Allen*, 12 M. & W. 279, *Re Lechmere and Lloyd*, 18 Ch. D. 524; and as to the effect of the late Act, see 4 Dav. Prec. pp. 225, 389, notes.

without having been married, or if there shall be but one such child, then as to the entirety of the sd premes, To THE USE of (d) such one or only child, his or her hrs and assigns, or, "in fee simple": AND IF all such children shall die, being sons under the age of twenty-one years, or being daughters under that age and without having been married, or if there shall be no such child, then, To THE USE of (d), &c.

Ultimate
limitation
to uses of
former set-
tlement.

XXII. To THE USES, upon the trusts, and with and subjt to the powers and provons which under or by virtue of the sd indre of settlemt of, &c., were subsisting or capable of taking effect in the premes hby assured immediately before the execution of the sd indre of the — day of —, *the disentailing deed*, [and were subsequent to the este in tail [male], limited by the sd settlemt to the sd —], and so as to confirm or restore the same uses, trusts, powers, and provons.

Name
and arms
clause, with
variations
(e).

XXIII. PROVD ALWAYS, and it is hby agrd and decl'd that every pson who shall under the limons hinbefore contd become entled as [legal or equitable] tenant for life, or tenant in tail [male or in tail] by pchase to the possion or rect of the rents and profits of the [*where there is a limitation to tenants in common, say, "entirety of the"*] hereds hby settled, [other than a married woman] shall within one year after he [or she] shall so become entled [*where infants may become entitled in possession, add, "or being an infant, within one year after he or she shall attain the age of twenty-one years"*] [And also that the husband of every female so becoming entled [not being a peer or the eldest or only son of a peer] shall within one year after such

(d) If the legal estate is in the trustees, say, "IN TRUST for."

(e) For the ordinary form, see 3 Davidson, Prec. p. 1142. The form in the text, instead of shifting the legal estate from the tenant for life incurring the forfeiture, makes him a trustee for the person next entitled, which is considered to be preferable, the gift over being, from the nature of the case, not likely to take effect. As to clauses of the frame of that in the text, see 4 Dav. Prec., p. 495, note.

female shall so become entled, or marry, which shall last happen], assume the surname and arms of —, and apply for a proper licence to bear the arms of — [either alone or quarterly with his or her own arms] (in case he or she shall not then already use and bear such surname and arms), and unless in either of the sd cases such pson shall be prevented from assuming the same by death: And if the pson so entled as afsd [or, in the case of a married woman, her husband] shall refuse or neglect within such year to assume the surname and arms of —, or to apply for such licence as afsd, or shall at any time afterwards disuse such surname or arms, Then, and in every such case, immediately after the expiration of such year, or such disuser, if the pson so entled as afsd shall be a tenant for life, he or she shall, during the remr of the life of the pson so entled, but without prejudice to the uses, estes, or powers, preceding or over-riding the este of the pson entled as afsd, and to the uses and estes limited in exercise of such powers, hold (*f*) the rents and profits of the sd premes in trust for the pson or psons who would for the time being be entled to the same, if the pson so entled as afsd were dead, and so that in such case all powers annexed to the este of the pson entled as afsd shall cease to be exercisable [and that any appointmt previously made by such pson, being a married woman, of a rentcharge [life or any less interest] to

(*f*) If the legal estate is in the trustees of the settlement, say, "Then and in every such case, immediately after the expiration of such year or such disuser, the sd, *trustees*, their hrs and assigns, shall, but without prejudice, &c., *as in text*, hold the rents and profits of the sd premes in trust for the pson or psons who would for the time being be entled to the same if the pson so entled as afsd being a tenant for life were dead, and being a tenant in tail [male or in tail] by pchase were dead, without having had issue inheritable under such limitation in tail [male or in tail], and so that in such case all powers, &c," *as in text*.

her husband after her death under the power hereinafter contained shall be void, and that the enjoyment of any jointure rent-charge previously appointed by such person [being a male] in favour of his wife, or of any portions previously appointed by such person [whether a male or female] in favour of his or her younger children, under the respective powers hereinafter contained, shall not be accelerated], and if the person so entitled as aforesaid shall be a tenant in tail [male or in tail] by purchase, then the estate in tail [male or in tail] of such person shall absolutely determine, and the hereditaments hereby settled shall immediately devolve on the person or persons next in remainder, as if such person were dead without having had issue inheritable under such limitation in tail [male or in tail].

Shifting clause carrying over the estate on succession to another estate.

With variations (g):

XXIV. PROVIDED ALWAYS, and it is hereby agreed and decided that if any person hereby made tenant for life or tenant in tail [male] by purchase of the hereditaments and premises hereby settled shall under the limitations of an indenture dated, &c., or, "the will, dated, &c., of K., deceased," [or by any other means whatsoever] become actually entitled, or if of full age would be actually entitled to the possession or receipt of the rents and profits or income of the X. estate in the county of —, thereby settled [devised in strict settlement], or of the hereditaments or other property which may by any means have become substituted for the said X. estate, or any part thereof, or to such possession or receipt subject only to a term or terms of years or charges having priority over or limited or created under the powers contained in such indenture [will] or conferred by statute (a), then and so often as the same shall

(g) As to clauses of this nature, see Mr. Butler's Note, Co. Lit. 327a; 3 Dav. Prec., p. 368 *et seq.*; and see forms adapted to various events, 3 Dav. Prec. p. 1145 *et seq.*; 4 Dav. Prec., p. 523, 539 *et seq.* The above form indicates the contingencies which usually have to be provided for.

(a) The following is another form to be substituted for the above description of the X. estate, providing for its having undergone changes; "The family estate of the said —, meaning thereby the X. estate in the county of —, or the bulk thereof, whether consisting of the same premises as the said estate now consists of, or in any manner altered in the way of addition, diminution, sub-

happen the hereds and premes hby settled shall go and remain to the uses, upon the trusts, and with and subjt to the powers and provons to, upon, with, and subjt to which the same hereds and premes would have stood limited and settled by virtue of these presents if such pson were dead without issue [male]; PROV'D ALWAYS that if and so often as the este of any pson hby made tenant for life shall determine under the provon lastly hinbefore contd, every jointure, rent-charge, portion, and sum for advancemt or maintenance of children which may have been charged by him or her on the sd hereds and premes hby settled, and the powers, remedies, and terms for securing the same, other than and except any portion or portions which may have become absolutely vested in his or her child or children, or issue, and the powers, remedies, and terms for securing the same, shall thenceforth absolutely cease and become void, and so as not to be restored by such reverter as hinafter mentd (b) : PROV'D ALSO, and it is hby agrd and decl'd that if by the effect of the shifting clause hinbefore contd the ultimate limon of the hereds and premes hby settled to the use of the sd A. in fee simple would but for this present proviso take effect in possession or in possession subjt only to a term or terms of years or charges limited or created by these presents or by any exercise of the powers herein contd or conferred by statute, then and immediately thereupon the same hereds and premes shall return and remain to the uses upon the trusts

Provision
as to jointures and portions actually vested in the event of estate shifting from the person charging them.

Reverter clause.

stitution, or otherwise, and whether free from or subjt to incumbrances."

(b) Or, if so intended, substitute for the last clause, "but nevertheless, without prejudice as to any tenant for life whose este shall determine under this present clause or provon to any jointure or portion monies which may have been charged by him under the respive powers for those pposes hinafter contd before his este shall so determine, and to any powers and remedies and terms of years for securing such jointure and portion monies resp'y."

Clause
preserving
jointures
and por-
tions from
destruction
by the
reverter
clause.

Trusts of
term to
secure
rent-
charge.
Variations
for several
rent-
charges (b).

and with and subj to the powers and provons upon, with, and subj to which the same would have stood limited if such shifting clause had not been inserted in these presents [*if the shifting clause affects tenants for life, insert here if necessary*, "But without prejudice, nevertheless, to any jointure, rent-charge [portion or sum for advancement or maintenance] which may have been charged thereon by virtue of the respive powers for those pposes hinbefore contd, in favour of the widow [or any of the children or more remote issue] of any pson hby made tenant for life, and any powers, terms of years or remedies for securing the same resply."]

XXV. AND IT IS HBY AGRD AND DECLD, that the sd hereds and premes are hinbefore limited to the sd, *trustees*, their exs, ads, and assigns, for the sd term of 100 years upon trust, that (c) if and so often as the sd rent-charge [either of the sd rent-charges], or any pt thof [respily], shall be unpaid for sixty days after any of the times hinbefore appointed for the paymt thof, then the sd, *trustees*, or the survor of them, or the exs or ads of such survor, shall by and out of the rents and profits of the sd premes or by the sale of timber or minerals, or by mtge [or sale] of the sd premes, or any pt thof, for all or any pt of the sd term, or by all or any of the means afsd, raise and pay the sd rentcharge of £—— [the rentcharge so in arrear], and all arrears thof then due, or which shall during their or his continuance in possion accrue due, and all costs and expenses occasioned by the non-paymt thof, or incurred in the execution of the trusts of the sd term, or otherwise relating thto, and shall pay the surplus of the monies to be raised as afsd to the

(b) This form can in future seldom be required having regard to the Conv. Act, 1881, s. 44, except in the case of an appointment of a rent-charge under a power created by a deed or will before the Act, in which case, if the rent-charge is to be considered as "arising" under the original instrument, the Act does not apply (sub.-s. 6), see p. 559, note.

(c) The declaration usually inserted here, that the trustees shall permit the reversioner to receive the rents till default in payment, is omitted, as this is sufficiently provided for by the clause at the end of the form, or by clause xxx., p. 578.

pson or psons for the time being entled in reversion immediately expectant on the sd term to the premes therein comprd : [AND (d) SUBJT as afsd, shall permit the rents and profits of the same premes, or such pt or pts thof as shall not for the time being be wanted for the pposes afsd, to be received by the pson or psons for the time being entled to the same premes in reversion immediately expectant upon the sd term.]

XXVI. AND IT IS HBY AGRD AND DECLD, that the sd premes are hby limited to the sd, *trustees*, their exs, ads, and assigns, for the sd term of 500 years upon trust, if there shall be any younger child or children of the sd intd marre, meaning thby any child or children, who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry, other than any son or sons who before his or their resply attaining the age of twenty-one years shall become (e) entled [or any daughter or daughters, who before her or their resply attaining that age or marrying, shall become indefeasibly entled], whether in possion or remr, under or by virtue of these presents to the sd hereds and premes hby settled for the first este in tail [male], then the sd, *trustees*, or the survor of them, or the exs or ads of such survor, shall after the death of the sd, *husband*, or in his lifetime at his request in writing [but during the lifetime of the sd, *husband's father*, not without his consent in writing], raise by mtge [or sale] of the sd premes, or any pt thof, for all or any pt of the sd term, or by and out of the rents and profits thof, or any pt thof, or by the sale of timber or minerals, or by all or any of the means afsd, the sum of £—— [such sum of money as is hinafter mentd, that is to say, if there shall be but one such younger child, the sum of £——; and if there shall be two such younger children,

Trusts of term for raising portions for younger children.

Variations where the amount to be raised depends on the number of children, and where the husband's father takes the first life interest.

(d) The words in this bracket may be omitted, if clause xxx., p. 578, is inserted.

(e) Where the eldest son is not necessarily the first tenant in tail [male], say, "indefeasibly."

Hotchpot
clause.

Mainte-
nance
clause.

the sum of £——; and if there shall be three or more such younger children, the sum of £——], and shall hold the same sum in trust for all or such one or more exclusively of the others or other of the sd younger children [or the issue of any such younger child or children, such issue to be born and take vested interests within twenty-one years from the death of the sd, *husband*], at such age or time, or respive ages or times, if more than one in such shares, and with such future or other trusts for the benefit of any such younger child or children [or issue], and upon such condons, with such restrictions, and in such mner as the sd, *husband*, (*f*) shall by any deed or deeds, revocable or irrevocable, or by will or codicil appoint: AND IN DEFAULT of and subjt to any such appointmt, in trust for the sd younger children or child, if more than one, in equal shares as tenants in common: PROVD ALWAYS that no such younger child who [or whose issue] shall take any pt of the sd sum of £—— [£—— or £——, as the case may be,] under any appointmt in psuance of the power hinbefore contd, shall in default of appointmt to the contrary have or be entled to any share of the unappointed pt of the sd sum without bringing the share or shares appointed to him or her [or to his or her issue] into hotchpot, and accounting for the same accordingly: AND UPON further trust that the sd trees or tree shall after the death of the sd, *husband*, [and the sd, *father*,] by any such means as afsd, raise such annual sum not exceeding what the interest of the expectant portion or portions for the time being of any child or children [or more remote issue], of the sd intd marre, at the rate of 4 per cent. per annum would amount to, and shall apply the same for the maintenance and education or benefit of such child or children [or more remote issue], for the time being entled in expectancy (whether under any appointmt or in

(*f*) If the wife takes a life interest, a power of appointment may be given to the husband and wife jointly, and to the survivor, as in p. 446, form xxv.; in which case consequential variations will be necessary in the rest of the clause.

default of appointmt) to a portion or portions, or of such one or more exclusively of the others or other of them as the sd, *husband*, shall by any deed or deeds, revocable or irrevocable, or by will or codicil appoint, and in default of and subjt to any such appointmt, as the sd trees or tree shall think fit, and the sd trees or tree may either themselves or himself so apply the same, or may pay the same for such ppose to the guardian or guardians of such child or children [or more remote issue] without seeing to the application thof: PROV'D Advance-
ment
clause. ALSO, and it is hby agrd and decl'd that it shall be lawful for the sd trees or tree, after the death of the sd, *husband*, or in his lifetime at his request in writing [but not during the lifetime of the sd, *father*, without his consent in writing], to raise by any such means as afsd any pt or pts not exceeding altogether one moiety of the expectant presumptive or vested portion to which any child [or more remote issue] of the sd intd marre shall be entled, whether under any appointmt or in default of appointmt, and to apply the same for his or her advancement or benefit as the sd, *husband*, shall in mner afsd appoint, and in default of and subjt to any such appointmt, as the sd trees or tree shall think fit: PROV'D ALWAYS, that Provision
as to events
in which
advances
are to be
considered
as part of
portions. every advance so made shall be taken into account in estimating the total amount raisable for portions in either of the cases following, but not otherwise, that is to say, if the person for whose benefit such advance shall be made [or his or her parent] shall become entled to a portion, or if but for this present proviso more than the sum of £—— *the maximum*, would become raisable for portions and advancements, in which latter case so much of the sum raisable for portions as shall form the excess shall sink into the este and shall not be raised: PROV'D ALSO, Power to
raise total
sum for
portions
before they
are all pay-
able. that it shall be lawful for the sd trees or tree, at any time during the lifetime of the sd, *husband*, at his request in writing, and after his death at their or his discretion [but not during the lifetime of the sd, *father*, without his consent in writing], when any portion or portions shall be payable, or when any sum shall be required for an advance,

to raise, by all or any of the means aforesaid, the whole or any part of the sum which in any possible event may become raisable for portions, and the said trustees or trustee shall, after paying thereout any portion or portions and advance or advances then payable, hold the surplus of the monies so raised upon trust to invest the same in their or his names or name in any of the investments in which the monies arising from a sale of the hereditaments hereby settled are hereby or by law (g) authorised to be invested, with power from time to time to vary such investments at discretion, and shall stand possessed of such investments and the income thereof respectively as the primary fund for the payment of portions, maintenance, and advancement respectively, if any, which may subsequently become payable, in exoneration, except in case of deficiency, of the hereditaments hereby settled, and so that no further sum shall be raised under the trusts of the said term of 500 years, except in case of such deficiency, but no mortgagee or person subsequently advancing any money on the security of the said term shall be bound to inquire as to the existence of such deficiency: And upon further trust, but subject to the trusts aforesaid, either themselves or himself to apply the whole or any part of such investments and income respectively, which may not be required for the purposes aforesaid, as if such investments had been made with monies arising from any such sale as aforesaid, or to transfer and pay the same respectively, or the monies arising from the conversion of the whole or any part of such investments, to the trustees or trustee for the time being authorised to receive and give a discharge for monies arising from any such sale as aforesaid (h), to be applied by them or him in manner aforesaid: PROVIDED ALSO that in case the said, *husband*, shall require any portion or portions or any advance

(g) These words have reference to the Settled Land Act, 1882, and the other Acts relating to investments by trustees. The effect of s. 21 (xi.), and s. 33 of the Settled Land Act taken together appears to be that it is immaterial for this purpose whether the sale is under the statutory or an express power.

(h) This of course assumes that the trustees of the portions term are not the trustees for general purposes.

or advances to be raised in his lifetime, he shall be bound to keep down the interest on the sum or sums so raised during his life; [(a) PROVD ALWAYS, and it is hby agrd that, subjt to the trusts hinbefore decld, and subjt to the right of the sd trees or tree to raise by any of the means afsd all costs and expenses incurred in the execution of the trusts of the sd term of 500 years, the rents and profits of the sd premes comprd in the sd term, or so much thof as shall not be required for the pposes afsd, shall be taken and received by the pson or psons entled to the sd premes in reversion immediately expectant on such term].

XXVII. AND IT IS HBY AGRD AND DECLD that the sd premes are hby limited to the sd, *trustees*, their exs, ads, and assigns, for the sd term of 100 years, if the sd — shall so long live, upon trust that the sd, *trustees*, or the survivor of them, or the exs or ads of such survivor, shall by and out of the rents and profits of the sd premes, or (if such rents and profits shall be insufficient, but not otherwise) by sale of timber or minerals, or by mtge [or sale] of the same premes or any pt thof for all or any pt of the same term, or by all or any of the means afsd, raise and pay the annual premiums and other sums, if any, necessary for keeping on foot or restoring the sd policies of assurance and any substituted policy or policies to be effected as hinafter is provd, or for effecting any such substituted policy: And it is hby agrd that if the sd policies, or any of them, or any such substituted policy as afsd, shall become void, then and so often as the same shall happen, the sd trees or tree shall forthwith effect a new policy or policies of assurance on the life of the sd —, in the names or name of the sd trees or tree in such sum or sums of money as would have been payable under the policy or policies which shall have become void if the sd — had then died: And that every such substituted policy, and the monies to become payable thereunder, shall be

Trusts of
term for
securing
payment of
premiums
on policies.

(a) The words in this bracket may be omitted, if clause xxx., p. 578, be inserted.

held and applied upon the trusts, and for the pposes hby decl'd concerning the sd original policies and the monies to become payable thereunder : Provd always that if any of the sd original policies, or any such substituted policy as afsd, shall become void, and the sd — shall refuse or neglect to do all such things as shall be necessary or proper to enable the sd trees or tree to effect a new policy or policies in mner afsd, in such office or offices as the sd trees or tree shall think proper, or if the life of the sd — shall not then be insurable, or shall be insurable at a premium more than double the premium for the insurance of a healthy male of his then age, the sd trees or tree shall during the whole or such pt of the residue of the life of the sd — as shall elapse before the accumulations hinafter directed shall amount to the sum hinafter mentd, raise out of the rents and profits of the sd premes the annual sum of £— [such annual sum of money as shall be equal to double the yearly premium required for insuring in such office as they or he shall select the paymt on the death of a healthy male of the same age as the sd — at the time of such policy becoming void of the sum which would have been payable on the same if he had then died], and shall accumulate the sd annual sums at compound interest by investing the same and the resulting income thof in any investmts in which monies arising from a sale of the sd premes hby settled are hby or by law authorised to be invested, with power from time to time to vary such investmts at discretion, until the death of the sd —, or until such accumulated fund shall amount in value to the sum which would have been payable under the policy or policies which shall have become void if the sd — had died at the time of the avoidance thof, which shall first happen : And it is hby agrd that if the sd trees or tree shall receive any monies under or by virtue of the sd original policies, or any of them, or any such substituted policy as afsd, or if they or he shall make any accumulation under the trusts hinbefore decl'd, they or he shall hold the monies received under or by virtue of the sd policies or

policy, and any such accumulated fund resp'y (b), upon such trusts and subj't to such powers and provons as would have been applicable thto resp'y if the same had arisen from a sale of pt of the sd hereds and premes or from an investmt of such proceeds of sale.

XXVIII. AND IT IS HBY AGRD AND DECLD that the sd ^{Trusts of term for raising money by mortgage for various purposes (c).} premes are hby limited to the sd *trustees*, their exs, ads, and assigns, for the sd term of — years, Upon trust that the sd trees, and the survors and survivor of them, and the exs or ads of such survivor shall as soon as conveniently may be by mtge of the sd premes or any pt thof (except the advowsons), or by the sale of timber or otherwise, raise such sum or sums of money as the sd trees or tree shall in their or his sole and absolute discretion consider to be sufficient for the pposes following (that is to say), 1st, for paymt of all the costs and expenses of and incidental or preliminary to the preparation, approval, and execution by all pties of the sd disentailing assurance of, &c., and these presents and of any other deeds or instrumts relating to the este or affairs of the sd —, executed concurrently herewith: 2ndly, for paymt of the succession duty in respect of the succession of the sd — to the sd premes; 3rdly, for putting into thorough repair, or rebuilding or renewing (if the sd trees or tree shall in their or his discretion think fit so to do, and unless the same premes shall have been let on a repairing lease), the mesuage or dwelling house and premes called — House, and the outbuildings thof, and the farm and other buildings, fences, and gates on the sd — estate; 4thly, for paymt to the trees of the sd indre of, &c., of the balance of costs and

(b) It is conceived that in the usual case where the person during whose life the accumulations are directed is the settlor, this is not within the restrictions of the Thellusson Act, 39 & 40 Geo. III., c. 98. Where there is a trust of this kind it is doubtful whether any subsequent directions for accumulation, except for the purpose of paying debts, or raising portions, would not be invalid, as offending against the Act: *Wilson v. Wilson*, 1 Sim. N. S. 288.

(c) See also the power to raise money by mortgage, *infra*, p. 609, and the note thereto.

expenses incurred by or payable to them as such trees, over and above what the monies remaining in their hands may be sufficient to discharge, the amount of such balance to be considered as conclusively ascertained by the admission thof in writing under the hands of the sd —, without the trees or tree for the time being of the sd term being in any mner bound or concerned to investigate the trust accounts, or under any responsibility with reference to the amount of such balance : 5thly, for the pchase of a cottage and land situate at —, &c., now or late in the occupation of X., if the same can be pchased on terms which the sd trees or tree shall in their or his absolute discretion consider to be reasonable, and the conveyance thof to the uses of this settlemt as if the same had been pchased with capital money arising hereunder, and so that the same may be taken with such title as the sd trees or tree may think fit to accept : and 6thly, for paymt of all costs and expenses of or incidental to any of the matters afsd, or the raising of any monies for any of the pposes afsd, and shall pay and apply all and every sums and sum of money so raised in or towards answering the several pposes afsd in such order and mner as the sd trees or tree shall in their or his discretion think fit. AND if there shall be any surplus of the monies so raised not required or applied for answering any of the pposes afsd, the same shall be applicable in or towards the paymt and discharge of any of the charges and incumbrances affecting or which may affect the sd settled hereds or any pt thof in such order and mner as the sd trees or tree shall in their or his discretion think fit. AND it is hby agrd and decl'd that any mtge made under the trust or power in that behalf hinbefore contd, may be made either by assignment or demise for all or any pt of the sd term of — years, or (if the sd trees or tree shall think fit,) by appointmt of the fee simple to the mtgee or mtgees, or as he or they shall direct, and may be made either with or without power of sale and with or without any provon for throwing the existing charges, and incumbrances, or any of them, upon the other hereds subj't thto by way of indemnity to

or exoneration of the hereds to be mtged, and for giving effect to any such indemnity or exoneration, and generally upon such terms and in such mner in all respects as the sd trees or tree shall think fit, and no mtgee advancing money upon any mtge purporting to be made under the trusts of the sd term of — years, shall be bound or concerned to inquire as to the parlar ppose or object for which the same is raised, or to see that such money is wanted, or that no more than is wanted is raised, but every such mtge shall be valid and effectual so far as regards the protection of the mtgee or mtgees.

XXIX. AND IT IS HBY AGRD AND DECLD that the sd premes are hby limited to the sd, *trustees*, their exs, ads, and assigns, for the sd term of twenty-one years [if the sd, *settlor*, [*settlors*, or either of them] shall so long live] upon trust, that the sd, *trustees*, or the survor of them, or the exs or ads of such survor, shall by and out of the rents and profits of the same premes, or by the sale of underwood or timber which ought to be cut in a proper course of managemt, yearly and every year during the same term raise the sum of £—, and shall accumulate the same at compound interest by investing the same and the resulting income thof in any investmts in which monies arising from a sale of the sd hereds and premes hby settled are hby or by law authorised to be invested, with power from time to time to vary such investmts at discretion until the termination of the sd term, and shall

Trusts of
term for
accumula-
tion at
compound
interest
(d).

(d) As, although an indefinite trust for accumulation for the payment of debts not offending against the rules of law against perpetuities is not obnoxious to the Thellusson Act, it is liable to be defeated by the debts being satisfied *aliunde*, as out of the proceeds of a sale (*Tewart v. Lawson*, L. R. 18 Eq. 490); and as a sale can now always be made by the tenant for life under the Settled Land Act, 1882, the proper course appears to be to make the trust for accumulation an absolute one as in the text, so that it will continue whether the debts are paid or not. See p. 575, note (b). But as the Act allows an accumulation during the life of the settlor, or, for twenty-one years after his death, but not for the two periods combined (see *Wilson v. Wilson*, 1 Sim. N. S. 288), it seems doubtful whether an accumulation for an immediate term of twenty-one years absolute would be valid; and to prevent question it may be better to insert the words in brackets.

then hold and apply such accumulated fund as if the same had arisen from the investmt of monies arising from a sale of any of the sd premes, but with power to apply any such accumulations in like mner at any time before the termination of the sd term.

General provision as to surplus rents of terms.

XXX. PROVD ALWAYS and it is hby agrd and decl'd, that subj't to the trusts hinbefore decl'd concerning the sd respive terms hinbefore limited, and to the rights of the trees and tree for the time being of such respive terms to raise by any of the means afsd and pay or reimburse themselves or himself all costs and expenses incurred in relation to the sd several trusts, the rents and profits of the hereds and premes comprd in each such term or such pt thof as shall from time to time remain after satisfying the sd trusts, shall be permitted to be taken and received by the pson or psons for the time being entled to the same premes in reversion immediately expectant upon such respive term.

Power to husband to jointure an after-taken wife.

XXXI. PROVD ALWAYS and it is hby agrd and decl'd, that if the sd, *husband*, shall [survive the sd, *wife*, and (a)] marry again, it shall be lawful for him the sd, *husband*, at any time, either before or after such marre, by deed revocable or irrevocable, or by will or codicil, to appoint to his after-taken wife in the event of her surviving him, for her life or any less period, a rent-charge or rent-charges by way of jointure not exceeding the annual sum of £——, [not exceeding during the life of the sd, *husband's father*, the annual sum of £——, and after his death the annual sum of £——, or, “but not to take effect during the life of the sd, *father*, without his consent in writing,”] to be charged upon all or any of the hereds hby settled, and to be payable without any deduction [except for succession duty] at such times and in such mner as the sd, *husband*, shall direct, with such powers and remedies for securing the same by distress and entry, and rect of the rents and profits of the same premes,

(a) The words in brackets might be better omitted having regard to the possibility of a divorce. In exercising such a power regard should be had to *Bullmore v. Wynter*, 22 Ch. D. 619.

and by appointing or demising or authorising such woman to appoint or demise the premes so charged to any pson or psons for any term of years, upon trusts for securing the same rent-charge or rent-charges, as the sd, *husband*, shall think fit (b), and it is hby agrd that the power of jointuring lastly hinbefore contd may be exercised as often as the sd, *husband*, shall marry.

XXXII. PROVD ALWAYS and it is hby agrd and decl'd that it shall be lawful for each [male] pson hby made tenant for life of the hereds hby settled other than the sd, *husband*, [and the sd, *father*,] either before or after he shall become entled to the possion or rect of the rents and profits of the same premes, but subj't and without prejudice to the uses, estes, and powers preceding or overriding the este of the pson exercising this present power, and to the uses and estes limited or created in exercise of such powers, at any time either before or after his marre with any woman by deed, &c., as in preceding form, substituting for, "*husband*," "the pson exercising this power." Power to subsequent tenants for life to charge jointures.

XXXIII. PROVD ALWAYS, and it is hby agrd and decl'd that it shall be lawful for each female hby made tenant for life of the hereds hby settled, either before or after she shall become entled to the possion or rect of the rents and profits of the same premes, but subj't and without prejudice to the uses, estes, and powers preceding or overriding the este of the pson exercising this present power, and to the uses and estes limited or created in exercise of such powers, at any time either before or after her marre, by deed revocable or irrevocable, or by will or codicil, to appoint to her husband or intd husband in the event of his surviving her (c), for his life or any less period a rent-charge or rent-charges not exceeding, &c., as in form XXXI, *mutatis mutandis*, and substituting for, "*husband*," "the pson exercising this power." Power to female tenants for life to limit rent-charges to husbands.

XXXIV. PROVD ALWAYS and it is hby agrd and decl'd that if the sd, *husband*, shall [survive the sd, *wife*, and (c)] marry Power to husband to charge por-

(b) See p. 559, note.

(c) See p. 578, note.

tions for
children of
a subse-
quent mar-
riage.

again it shall be lawful for him the sd, *husband*, either before or after such marre, by deed revocable or irrevocable, or by will or codicil [but subjt and without prejudice to the sd several terms hinbefore limited, and to the trusts thof], to charge all or any of the sd hereds and premes hby settled with the paymt for the portion or portions of his younger (*d*) child or children by any such after-taken wife, meaning thby any child or children, who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry, other than any son or sons who, before his or their resply attaining the age of twenty-one years, shall become (*e*) entled [or any daughter or daughters who, before her or their resply attaining that age or marrying, shall become indefeasibly entled], whether in possion or remainder, to the sd hereds and premes hby settled for the first este in tail [male or in tail] [or the issue of any such younger child or children, such issue to be born and take vested interests within twenty-one years from the death of the said, *husband*,] of the sum of £——, [of any sum not exceeding in the different events hinafter specified the different sums hinafter mentd, that is to say, if there shall be but one such younger child the sum of £——, if there shall be only two such younger children the sum of £——, and if there shall be three or more such younger children the sum of £——], such sum to be an interest vested in such younger child or children [or issue], or such one or more exclusively of the others or other of them, at such age or time, or respive ages or times, if more than one, in such shares, and with such future or other trusts for the benefit of any such younger child or children [or issue], and subjt to such powers of appointmt by the sd, *husband*, or any other pson, and to such provons for the

(*d*) If the estate is settled on the children of the intended marriage only, this power should of course extend to all the children of a future marriage.

(*e*) Where the husband's eldest son is not necessarily the first tenant in tail [male], say, "indefeasibly."

advancemt of any child or children [or issue] of any such future marre out of his, her, or their portions or expectant portions at the discretion of any trees or tree or otherwise, and to such other powers and provons for the benefit of such younger child or children [or issue] and in such mner as the sd, *husband*, shall think fit [but not to be raised or payable during the lifetime of the sd, *husband's father*, without his consent in writing], And also in like mner to charge the sd premes, or any pt thof [but subjt and without prejudice as afsd], with such annual sum not exceeding what the interest, at the rate of 4 per cent. per annum, of the expectant portion or portions of any child or children [or issue] of any such future marre would amount to, such annual sum to be clear of all deductions, except succession duty, and to commence from such time or times [but not during the lifetime of the sd, *husband's father*, without his consent in writing], and to be applied in such mner, at the discretion of such trees or tree or otherwise, for the maintenance and education of the child or children [or issue] for the time being entled in expectancy to a portion or portions, or of such one or more of them as the sd, *husband*, shall think fit, And also in like mner to charge the sd premes, or any pt thof [but subjt and without prejudice as afsd], with the paymt either in his own lifetime or after his death [but during the lifetime of the sd, *husband's father*, not without his consent in writing] of such pt not exceeding altogether one moiety of the then expectant or presumptive or vested portion of any child [or issue] of any such future marre, as the sd, *husband*, shall during his life, or any trees or tree shall after his death, in their or his discretion, think fit, and to direct the same to be applied for the advancemt or benefit of such child [or issue] in such mner as the sd, *husband*, shall during his life, or such trees or tree shall after his death think fit, but so that every advance so made shall be taken into account in determining the total amount to be raised for portions under this present power in case the child [or issue] for whose benefit such advance shall be made [or

Power to
limit a
term for
securing
portions.

his or her parent] shall become entled to a portion, or if but for this present proviso more than the sum of £——, *the maximum*, would be raisable for portions and advancemts, in which latter case so much of the sum raisable for portions as shall form the excess shall sink into the este and shall not be raised; AND ALSO to appoint the premes so charged as afsd [but subjt and without prejudice as afsd] to any pson or psons for any term of years commencing from the decease of the sd, *husband*, with or without impeachmt of waste, upon the usual trusts for raising the principal and annual sum or sums so charged as afsd for portions, maintenance, education, and advancemt, and the costs and expenses to be incurred in the execution of the trusts of such term.

Power to
subsequent
tenants for
life to
charge
portions.
Variations
for female
tenants for
life.

XXXV. PROVD ALWAYS, and it is hby agrd and decl'd, that it shall be lawful for every pson hby made [legal or equitable] tenant for life of the sd hereds and premes hby settled other than the sd, *husband*, [and the sd, *husband's father*,] either before or after he [or she] shall become entled to the possion or rect of the rents and profits of the same premes, but subjt and without prejudice to the uses, estes, and powers preceding or overriding the este of the pson exercising this present power, and to the uses and estes limited or created in exercise of such powers, at any time, either before or after his [or her] marre, by deed revocable or irrevocable, or by will or codicil, &c., *continue, as in preceding form, mutatis mutandis, substituting for "husband," "the pson exercising this power," and saying, "the younger child or children of the pson exercising this power by such marre," and, "become indefeasibly entled, &c."*

Proviso
that a
charge of
a rent-
charge or
portions
shall not
take effect

XXXVI. PROVD ALWAYS that no charge of any rent-charge, or portions, or sums for maintenance or advancemt, which may be appointed or charged under the respive powers hinbefore contd (a), shall take effect unless either the pson charging the same shall be, or become, or unless some of his

(a) If this clause is contained in a settlement by a father and son, insert here, "by any pson other than the sd, *son*."

[or her] issue shall become, or if of full age would have become, entled (b) to the possion or rect of the rents and profits of the premes charged thwith.

xxxvii. PROVD ALWAYS that the same premes, or any pt thof, shall not by virtue of any appointmts or charges made under the respive powers hinbefore contd be at any one time subjt to the paymt of rent-charges exceeding in the whole, inclusive of the rent-charge hby limited to the sd, *wife*, if payable, the annual sum of £—, or ultimately become subjt to the paymt of any greater sum in the whole for portions, inclusive of the sum hby charged for portions of the younger children of the sd, *husband*, than the sum of £—, so that if by the exercise of the same respive powers, the sd premes, or any pt thof, would, but for this present provo have been charged with the paymt of rent-charges or portions to a larger amount, the charge or charges by which such excess shall be occasioned, or such pt thof respby as shall form such excess, but as regards such excess of rent-charges only during the continuance of such excess, shall sink into the premes charged thwith and not be raisable, and the same rent-charges and portions respby shall have preference and priority according to the order of limon of the estes of the psons by whom the same shall respby be charged.

xxxviii. PROVD ALWAYS, and it is hby agrd, that it shall be lawful for every female hby made tenant for life of the hereds hby settled, either before or after she shall become entled to the possion or rect of the rents and profits of the same premes, but subjt and without prejudice to the uses,

unless the person charging, or his issue, becomes entitled in possession. Proviso limiting total amount chargeable for rent-charges and portions.

Power to female tenants for life to appoint life interests to surviving husbands (c).

(b) When by the effect of a name and arms' clause, a remainderman may become entitled to the receipt of the rents and profits, subject to be ousted by the birth of a person higher in order of limitation, add the words, "for an este not liable to be defeated by the birth of any other pson."

(c) The large powers of sale, &c., conferred on tenants for life by the Settled Land Act, 1882, may sometimes be a reason for giving a power to appoint a rent-charge (see form xxxiii., p. 579), rather than a life estate, to a surviving husband.

estes and powers preceding or overriding the este of the pson exercising this present power, and to the uses and estes limited or created in exercise of such powers, at any time, either before or after her marre, by deed revocable or irrevocable, or by will or codicil, to appoint the sd hereds, or any pt or pts thof, to her husband or intd husband and his assigns for his life, or any less period, in remr expectant on her decease, subjt or without being subjt to impeachmt of waste: PROVD ALWAYS and it is hby decl'd that any man to whom the whole, or any pt or pts of the sd hereds, shall be appointed as last afsd, shall not exercise the powers hby given to a tenant for life of jointuring and charging portions, [but shall, as to the premes so appointed to him for his life or any less este of freehd, be considered, during the continuance of such este, as a tenant for life under the limons herein contd for the ppose of exercising any other power hby given to a tenant for life]: AND it is hby decl'd that the power lastly hinbefore contd may be exercised as often as any pson entled to exercise the same shall marry: PROVD ALWAYS that no appointmt under the power lastly hinbefore contd shall take effect, unless either the pson making the appointmt shall be or become, or some of her issue shall, or, if of full age and if no such appointmt had been made, would have become, entled (d) to the possion or rect of the rents and profits of the premes comprd in such appointmt.

Power to
charge a
gross sum.

xxxix. PROVD ALWAYS, and it is hby agrd, that it shall be lawful for the sd — by any deed or deeds, revocable or irrevocable, or by will or codicil [but subjt to the sd terms of — years and — years, and the trusts thof,] to charge all or any pt of the sd premes hby settled with the paymt of any sum or sums of money not exceeding in the whole £—, togr with interest thereon at a rate not exceeding 5 per cent. per annum, for the benefit of himself or any other pson or psons, and for such pposes in all respects as he may think fit.

(d) See note (b), last page.

XL. AND TO THE FURTHER USE, [*or*, PROVD ALWAYS, and Power to limit a term for securing a rent-charge, or gross sum charged, or authorised to be charged (e).] that it shall be lawful for the sd — [for every pson to whom a rent-charge or rent-charges is or are hby limited, or to whom a power of charging the sd hereds and premes hby settled, or any pt thof, with a rent-charge or rent-charges, or any principal monies and interest, is hby given] by deed or by will or codicil [subjt as afsd] to appoint all or any of the premes charged as afsd [charged with any such rent-charge or rent-charges, or principal monies and interest] to any pson or psns for any term or terms of years, with or without impeachment of waste, to commence from — [from the determination or failure of all the freehd estes hby limited, which shall precede in order of limon the rent-charge or este of the pson exercising this power], or any subsequent time, upon such usual trusts for raising the rent-charge [or rent-charges, or principal monies and interest] charged [or to be charged] as afsd, and all costs and expenses in relation thto, as the sd — [as such pson] shall think proper.

XLI. PROVD ALWAYS, and it is hby agrd that if any pson who would but for this present provon for the time being be entitled to the possion or rect of the rents and profits of the sd hereds and premes hby settled (*f*) as tenant for life or in tail [male, or in tail] by pchase, shall [being a male] be under the age of twenty-one years [or being a female be under that age and a spinster], the sd, *trustees*, or the survivor of them, or the exs or ads of such survivor shall enter into the possion or rect of the rents and profits of the same Power to trustees to manage during minorities. Variations, where there are limitations to females or tenants in common, and where an undivided share is settled (g).

(*e*) Having regard to the Conv. Act, 1881, s. 44, this power, so far as rent-charges are concerned, can rarely be wanted. See p. 559, note (*a*).

(*f*) Where there are limitations to tenants in common in fee, or in tail, insert here, "or of any undivided pt or share thof."

(*g*) As to this clause, see 3 Dav. Prec. 463. By the Conv. Act, 1881, s. 42, where the person who would but for that enactment be entitled to the possession or receipt of the rents and profits of land (of any tenure) is an infant, and in the case of a female unmarried, the trustees, *i.e.* those appointed for the purpose by the settlement, or if there are none then the trustees with power As to the minority clause in the Conv. Act, 1881, s. 42.

premes (a), and shall, during the minority [or minority and spinsterhood as the case may be] of such pson, continue in

of sale or of consenting to a sale, or if there are none, then the trustees appointed for the purpose by the Court, are invested with the ordinary powers of management (subject to a restriction as to cutting timber and committing waste if the infant is impeachable for waste), and of applying any part of the rents and profits at discretion for the infant's maintenance, education, or benefit, or paying the same for that purpose to the parent or guardian; and the surplus income is to be invested on securities authorised by the settlement or the general law, and accumulated at compound interest. The accumulations, subject to a power to apply them for maintenance, &c., in subsequent years, are to be held in trust for the infant on attaining twenty-one, or if a female marrying; and in the event of the death of the infant under age, and in the case of a female without having been married, then if the infant was tenant for life, or tenant in tail, or tail male or female, by purchase, on the trusts declared thereof by the settlement, or if none are declared, or the infant was entitled by descent and not by purchase, or was tenant in fee simple absolute or determinable, then in trust for his or her personal representatives, as personal estate. Where the infant is entitled to an undivided share the powers of the Act may be exercised jointly with the co-owners. The statutory provisions will be excluded by the expression of a contrary intention and are to be subject to the provisions of the settlement.

Remarks
on the Act.

These statutory provisions differ from the clause in the text:—1. In being permissive instead of directory. 2. In not being restricted (as the clause in the text necessarily is, to keep within the law as to perpetuities), to infants taking by purchase, but extending to infants taking by descent; but as regards the trusts of the accumulations the clause does not go beyond what would have been lawful before the Act; and 3. In not extending to making roads, &c., and opening new mines, and in being subject to the restriction against waste where the infant is impeachable for waste.

Act may
be partly
relied
upon.

The powers of management, &c., and maintenance in this section, coupled with the powers which the trustees would possess on behalf of the infant under the Settled Land Act, 1882, s. 60 (see p. 542, note), are ample for all ordinary purposes; and, subject to a question as to the destination of the accumulations, it is considered that the clause may in general be relied on as sufficient; but the general trustees of the settlement should be expressly appointed trustees for the purposes of this enactment as well as the Settled Land Act (see as to the latter, p. 544, note).

As to the
effect of
s. 43 of
the Conv.
Act, 1881,

If the settled property is conveyed to the trustees so as to vest the legal estate in them in trust for the infant, the case would also fall within the 43rd section of the Act giving general powers of maintenance, which provides that the accumulations (subject to a power to apply them for the maintenance

(a) For tenants in common, say, "or of such undivided pt or share thof."

such possession or rect, and manage or superintend the management of the same premises (b) [(c) with power to cut timber and underwood for sale, repairs or otherwise, and to open and work mines, minerals, quarries, and brickfields (d), and to erect, pull down, and repair houses or other buildings, and to drain and make roads and fences, and otherwise to improve all or any of the sd premises, and to insure houses and buildings against loss or damage by fire, and generally to deal with the sd premises as if they or he were the absolute

of the infant in subsequent years) are to go to "the person who ultimately becomes entitled to the property from which the same arises," unless otherwise provided by the settlement; a provision which if the infant attains twenty-one, or being a female marries, is in direct conflict with s. 42; see p. 450, note. The trust in s. 42 of the accumulations in the event of the infant's death for his personal representatives is also less convenient than the ordinary trust (where he takes by purchase) adding them to capital.

These considerations seem to make it desirable to provide expressly for the destination of the accumulations in both events in accordance with the ordinary express clause (in the text), as far as the law permits; but where the infant takes by descent, a provision that on his death under twenty-one, the accumulations shall be added to capital instead of forming part of his estate, would not be lawful (except so far as it may be sanctioned by s. 43), and it would be better in that event to give them to his personal representatives according to s. 42.

The clause referring to the Act would consist of—1. A declaration who are to be the trustees for the purpose. 2. A declaration, which seems desirable, making it directory instead of merely permissive. 3. Any extension of the powers of management or investment, and 4. Any modification of the trusts of the accumulations, which may be desired.

(b) See note (a) on p. 586.

(c) The words in this bracket may usually be omitted where brevity is desired.

(d) For a mining estate the following may be added here: "and for that purpose to exercise such powers and liberties as might be conferred on a lessee of the sd mines and minerals and to make any alterations in the plant, machinery, and chattels employed in the working of the sd mines and minerals, and to dispose of the same and apply the proceeds in the purchase of new or the improvement of existing plant, machinery or chattels, keeping up as far as may be the value thereof, and to execute works of any kind in relation to such mines and minerals."

owners or owner thof] without being responsible for any loss occasioned thby (e), and shall, out of the rents and profits of the sd premes (f) [including the produce of timber, underwood, mines, quarries or brickfields] pay the expenses incurred in such managemt or otherwise in respect of the premes, and any annual sums of money and the interest on any principal sums of money for the time being charged on the same premes or any pt thof (g), and in the next place pay and apply such sum or sums of money as the sd trees or tree shall think fit having regard to the age of such minor, in or towards his [or her] maintenance, education, or advancement, and may either themselves or himself so pay or apply the same, or may pay the same to the guardian or guardians of such minor for the ppose afsd without seeing to the application thof: And shall accumulate the residue of the sd rents and profits [and produce] in the way of com-

Variation
for un-
divided
shares.

(e) Where an undivided share is settled, say, "And may exercise the sd powers of managemt over the undivided pt or share hby settled alone, or in conjunction with the pson or psons entled to, or having power in that behalf over the other undivided pt or share, or pts or shares of and in the sd hereds and premes, and so that in the latter case any monies received or outgoings paid or incurred may be apportioned after the same shall have been received, paid, or incurred [and that notwithstanding that any of the sd trees, or a sole tree, may be entled to, or interested in, any of the other undivided pts or shares]." As to the words in brackets, see above, p. 471, note (f). The same addition should be made where there are limitations to tenants in common, with the substitution of "the undivided pt or share, pts or shares belonging to any minor or minors," for "the undivided pt or share hby settled."

(f) For tenants in common, say, "or of such undivided pt or share thof as afsd."

(g) For an undivided share or tenants in common, say, "or a proportionate pt of such expenses, annual sums, and interest, as the case may require."

pound interest, by investing the same and the resulting income thof in or upon any investmts in which money arising from a sale of the sd hereds and premes is hby or by law authorized to be invested, with power from time to time to vary such investmts at discretion, and shall stand possessed of the sd residue of the sd rents and profits [and produce], and the accumulations thof (a), and the investmts representing the same, upon the trusts following, that is to say, if the pson during whose minority the same shall have been accumulated shall [being a male] attain the age of twenty-one years [or being a female attain that age or marry] then upon trust for such pson his [or her] exs or ads as psonal este, but if such pson [being a male] shall die under the age of twenty-one years [or being a female shall die under that age and without having been married] then upon the trusts and subjt to the powers and provons which would have been applicable thto if the same had arisen from a sale of the sd premes, but so that the whole or any pt of such accumulations may at any time be applied for the benefit of any such minor as if the same had been rents and profits arising in the then current year.

XLII. PROVID ALWAYS, and it is hby agrd that the sd, *trustees*, and the survors and survivor of them shall be the trees and tree of these presents for the pposes of the 42nd section of the Conveyancing and Law of Property Act, 1881, the powers and provons whof [as hby modified and subjt to the provons herein contd] shall apply to these presents, [and so that it shall be obligatory on the sd trees or tree to enter into and continue in the possion or rect of the rents and profits of the sd premes hby settled [or any undivided share thof, as the case may be] in every case thby provid for]; [AND that in addition to the powers of the sd Act the

Clause supplemental to and modifying statutory minority clause (b).

(a) Where there is a prior trust for accumulation for any purpose other than the payment of debts or raising portions for younger children, the provisions in the text might be held to offend against the Thellusson Act, 39 & 40 Geo. III., c. 98, see above, p. 575, note (b); except so far as this objection is removed by the Conv. Act, 1881, s. 42, 43, see p. 586, note.

(b) See p. 585, note (g).

sd trees or tree shall have power, &c., *insert any additional powers required ;*] [AND that any surplus rents and profits, and the accumulations thof may during any such minority as is provd for by the sd Act be invested in any of the modes in which monies arising from a sale of the sd premes are by these presents or by law authorised to be invested ;] AND that any accumulated fund arising from the rents and profits of the sd premes during the minority of any tenant for life or in tail [male or in tail] by pchase shall (without prejudice to the power to apply the same at any time as if the same had been rents and profits of the current year) be held upon the trusts following, that is to say, *as in the last form*, p. 589, And any accumulations so arising during the minority of any tenant in tail [male or in tail] by descent shall (without prejudice as afsd) be held in trust for him or her or his or her psonal representatives, whether he or she shall attain the age of twenty-one years, or being a female marry or not (c).

Power to
lease for

XLIII. AND IT IS HBY AGRD, that it shall be lawful for the sd, *husband*, during his life, and for the sd, *trustees*, or the

Variation
for limita-
tions in
fee.

(c) Where the limitations are in fee with an accruer clause or gift over on death under twenty-one, &c., say, "and that any accumulated fund arising during any minority shall (without prejudice, &c.) be held upon the trusts following, that is to say, if the pson during whose minority the same shall have arisen shall have taken by pchase and shall attain the age of twenty-one years or being a female shall marry, or in case such pson shall have taken by descent, then in trust for him or her absolutely, but in case such pson shall have taken by pchase and shall die under the age of twenty-one years, and if a female without having been married, then, *on trusts of sale monies.*"

There appears to be no objection, notwithstanding the Conv. Act, s. 42, sub-sec. 5 (iii.), to capitalizing the accumulations arising during the minority of a tenant in fee by *purchase*.

As to the form of the trust of the accumulations where the settlement contains a shifting clause, see 3 Dav. Prec. 1200.

[survors or] survivor of them, or the exs or ads of such ^{twenty-one} survivor, during the minority of any son [or daughter] of the ^{years (d).}

(d) As to the powers of leasing, sale, &c., now vested in tenants for life and other limited owners under the Settled Land Act, 1882, see p. 541, note, where the general provisions of the Act are stated. The course here adopted with regard to these powers, is to insert the express powers for comparison with the statutory powers, and for use in any cases in which their insertion may be thought proper, with the addition of forms of clauses incorporating the statutory powers for use in any exceptional cases in which they may not apply, or their application may be doubtful, and clauses extending the statutory powers. ^{As to powers of Settled Land Act generally.}

The Act contains provisions (part iv., clauses 6 to 14), which in general render it unnecessary to insert express powers of leasing and accepting surrenders of leases. By clause 6, a tenant for life (including any other person having the powers of a tenant for life under the Act), may lease the settled land or any easement, right, or privilege of any kind over or in relation to the same for any purpose, whether involving waste or not for a term not exceeding for a building lease 99 years, for a mining lease 60 years, and for any other lease 21 years. ^{Leasing powers under Act.} As to building and mining leases, see *infra*.

Every lease is to be by deed, and to take effect in possession not later than twelve calendar months after date, and is to reserve the best rent (which includes render, ss. 2, 10 (ii.)), having regard to any fine taken, and any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case (s. 7); but the value of a surrendered lease may be taken into consideration in fixing the rent and terms of the lease, s. 13 (5). ^{Provisions as to rent, &c.}

Any fine taken is applicable as capital, and must be paid to the trustees (see ss. 42, 53). ^{Fines}

The lease must contain a covenant by the lessee for payment of the rent, and a condition of re-entry on non-payment thereof within a time not exceeding thirty days, s. 7 (3). A counterpart is to be executed by the lessee, and delivered to the tenant for life, but the execution of the lease by the tenant for life is to be evidence that this is done, s. 7 (4). A statement contained in, or endorsed on a lease signed by the tenant for life, respecting any matter of fact or calculation under the Act in relation to the lease, is in favour of the lessee and those claiming under him, to be sufficient evidence of the matter stated, s. 7 (5). ^{As to covenants, &c.}

The statutory leasing power extends (s. 12) to the making of (1), a lease for giving effect to a contract entered into by a predecessor in title of a tenant for life to make a lease, which if granted, would have been binding on the successors in title; (2) a lease for giving effect to a covenant for renewal, the performance whereof could be enforced; and (3), a lease for confirming a previous lease which is voidable or void, but the lease must be such as could have been lawfully granted at the date of the original lease. ^{Special powers.}

The tenant for life has also full power to accept surrenders of leases, and grant new leases (s. 18). ^{Surrenders}

By s. 15, "the principal mansion house and the demesnes thereof, and other ^{As to man-}

sd intd marre, who, if of full age, would be entled to the possion or rect of the rents and profits of the hereds and premes hby settled [*where there is a limitation to tenants in common, add, or of any undivided share or shares thof*] (e), to demise (f) all or any of the sd hereds and premes for any term of years, not exceeding twenty-one years, to take effect in possion, or within six calendar months from the date of the lease, so as there be reserved in every such lease the best yearly rent or rents to be incident to the reversion that can be reasbly obtained, [without taking anything in the nature of a fine or premium,] [*or, having regard to any fine or premium which may be taken, and so that any fine or premium taken shall be paid to the sd, trustees, or the survors or survivor of them, or the exs or ads of such survivor, and be applied as if the same had arisen from a sale of the sd premes*], and so as there be contd in every such lease a condon of re-entry for non-paymt within a reasonable time, to be therein specified, of the rent or rents thby reserved.

The same, XLIV. AND IT IS HBY AGRD, that it shall be lawful for (g)

sion house, lands usually occupied therewith," are not to be leased without the consent of
&c. "the trustees of the settlement" (see p. 544, note), or an order of Court; see as to this, Vol. I., p. 837.

Execution of deeds and contracts. The tenant for life is by s. 20, fully empowered to execute any deed for effecting the lease, including power to make a legal lease of copyholds or leaseholds vested in trustees (which could not of course be authorised by an express power, see Vol. I., p. 799, note, and Vol. II., p. 469, note); and to make, vary, and rescind contracts for leases, s. 31, see p. 543, note.

(e) If the deed contains several leasing powers, it may be found convenient to continue from this point as follows, "to exercise over the whole or any pt of the same premes [or, according to circes, of any such undivided share or shares thof] the powers following, that is to say, FIRST, a power to demise, &c., as in the text; SECONDLY, a power to demise, &c."

(f) Although the phrase "appoint by way of lease" is technically more appropriate where the lease is effected by appointment of the use, the word "demise" is here used as being more convenient and free from any material objection, and in any case in which the express power operates under the Settled Land Act, 1882, s. 57, by way of extension of the statutory powers, the latter word is strictly correct.

(g) Where the form of name and arms clause at p. 564, is used, say

every pson hby made tenant for life of the sd hereds and premes hby settled, when he [or she] shall be entled to the possion or rect of the rents and profits of the same premes, and also for the sd, *trustees*, or the [survors or] survor of them, or the exs or ads of such survor, during the minority of any pson who, under the limons hinbefore contd, if of full age, would be entled, &c., *continue as in preceding form.*

XLV. AND ALSO (a) to demise all or any pt of the sd hereds and premes hby settled to any pson or psons who shall improve or covenant to improve the same within *three* years from the date of the lease by building thereon any new house or building, or by repairing, adding to, or improving any then existing house or building, for any term of years not exceeding [ninety-nine] years, to take effect in possion,

where there are various limitations for life and in tail or fee.

Power to grant building and improving leases.

Variation for reversionary leases (b).

“ for every pson for the time being beneficially entled under these presents to the possion or rect of the rents and profits of the hereds and premes hby settled for any legal or equitable este of freehd, and also for the sd, *trustees*, or the [survors or] survor of them, or the exs or ads of such survor during the minority of any pson who, if of full age, would be entled as afsd, &c.”

(a) If the form given above, p. 592, note (c), is adopted, this will run, “ AND SECONDLY, &c.” If it should be found necessary to make a new commencement say, “ AND IT IS HBY FURTHER AGRD that it shall be lawful for the pson or psons hinbefore authorised to grant leases of the hereds and premes hby settled to demise, &c.”

(b) A tenant for life or person having the powers of a tenant for life under the Settled Land Act, 1882, may under s. 6 grant building leases, including leases of easements, &c., for any term not exceeding 99 years. The general provisions of the Act as to the terms of the lease (s. 7) and other matters relating to leasing powers (ss. 12, 13, 15, 19, 20, & 31), which are stated or referred to in p. 591, note, apply equally to building leases.

Power to grant building leases under Settled Land Act.

By s. 8 “ Every building lease is to be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected, improved, or repaired, or agreeing to erect, improve, or repair buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorized by the Act (s. 25) for or in connection with building purposes. A peppercorn rent or a nominal or other rent

Provisions as to building leases.

or within six calendar months from the date of the lease (c), so as there be reserved on every such lease the best yearly rent or rents that can be reasbly obtained [without taking anything in the nature of a fine or premium,] [*or, having regard, &c., as in form XLIII.*], but so that during the first three years of any such term a peppercorn rent, or rent smaller than that payable during the residue of such term may be reserved: And so as there be contd in every such lease a condon of re-entry for non-paymt within a reasble time to be therein specified of the rent or rents thby reserved, and so as the lessee or lessees do execute a counterpt thof, and do thby covenant for the due paymt of the rent or rents thby reserved, but so that the execution of the lease by the lessor or lessors shall be conclusive evidence in favour of all psons claiming under the lessee or lessees of the due execution of such counterpt.

less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.

It is also provided (sub.-s. 3) that where the land is contracted to be leased in lots the entire rent may be apportioned in any manner, save that the rent reserved by any lease is not to be less than 10s., nor more than one-fifth of the full annual value of the land and buildings; and the total rent reserved on all the leases for the time being granted is not to be less than the total rent, which, in order that the leases may be in conformity with the Act, ought to be reserved in respect of the whole land for the time being leased.

As to
leases or
grants for
longer
terms or in
perpetuity.

By s. 10 the Court is empowered, where the custom of any district so requires, or there would otherwise be a difficulty, to authorise the tenant for life either generally or in any particular case to make leases or grants for building or mining purposes of the settled land in that district for any longer term than that authorised by s. 6, or in perpetuity, at fee farm or other rents, secured by condition of re-entry or otherwise. For a form extending the statutory power in this respect see *infra*.

As to the appropriation of land for roads, &c., see s. 16, and *infra*.

These leasing powers, coupled with the powers of s. 16, as to laying out roads, &c., appear to be ample, except where leases for longer terms or grants in fee on chief rent are customary or may be required, and except that it may in some cases be desirable to exclude the restrictions of s. 8, sub-s. 3.

Variation
for rever-
sionary
leases.

(c) If reversionary leases are authorised, insert here "or for any term of years, to commence on the expiration of any then existing lease of the hereds and premes comprd in such reversionary lease, and to cease at any time not later than ninety-nine years from the date of the reversionary lease."

XLVI. AND ALSO (e) to demise all or any of the mines, quarries, stones, minerals, and substances in, under, or upon any of the lands hereby settled, either with or without the surface of such lands or any part thereof, and either with or without any messuages, buildings, lands, easements, or hereditaments convenient to be held with the same respect, and whether the same shall or shall not have been previously opened or worked, for any term of years not exceeding [sixty] years, to take effect in possession, or within six calendar months from the date of the lease (f), with such liberties, licenses, and powers for searching for, working, getting, washing, smelting,

Power to grant mining leases.

Variation for reversionary leases (d).

(d) A tenant for life under the Settled Land Act, 1882, may by s. 6 grant Power mining leases, including leases of easements or other rights or privileges over to grant the settled land, for any term not exceeding 60 years. As to the general provisions of the Act applicable to mining as well as other leases (ss. 7, 12, 13, 15, 19, 20, & 31), see p. 591, note.

Leases under Settled Land Act.

By s. 2 (10) (iv.) a "mining lease" is a lease for mining purposes or purposes connected therewith, and includes a grant or license for mining purposes; and "mining purposes" include the sinking and searching for, working, getting, making merchantable, converting, and disposing of, &c., mines and minerals in or under the settled land or any other land, and the erection of buildings and execution of works; and "mines and minerals" include all minerals and substances whether obtainable by underground or surface working, and whether already opened or in work or not.

Meaning of mining lease.

By s. 2 (10) (ii.) rent includes yearly or other rents and toll, duty, royalty, or other reservation by the acre, or the ton, or otherwise; and payment includes &c. delivery. By s. 9 in a mining lease the rent may be according to the acreage worked or the quantities of any mineral gotten, made merchantable, converted, or disposed of, in or upon the settled land or any other land or any facilities given in that behalf; and a fixed or minimum rent may be reserved, with or without an average clause; and a lease may be made partly in consideration of the lessee having executed or agreeing to execute an improvement authorised by the Act (s. 25) for mining purposes.

As to rent,

By s. 17 a mining lease may be either of land with or without an exception or reservation of all or any of the mines and minerals, or of any mines and minerals, and with or without a grant or reservation of powers of working, wayleaves, or rights of way, rights of water and drainage, and other powers, easements, and rights for mining purposes in relation to the settled land or any other land.

As to lease of minerals apart from surface, &c.

As to the power of the Court to authorise leases or grants for longer terms or in perpetuity for mining purposes, see s. 10, p. 594, note.

(e) See above, p. 593, note (a).

(f) If reversionary leases are authorised insert here, "or for any term of years to commence on the expiration of any then existing

Variation for reversionary leases.

and making merchantable the sd mines, quarries, stones, minerals, and substances as to the pson or psons exercising this present power shall seem proper, and to insert in any such lease powers of instroke and outstroke, and an average clause enabling short workings in any one year to be made up in the following year or years without paying any royalty for the same, and power to refer disputes arising thereunder to arbitration, and any other clauses or provons which may appear to the pson or psons exercising this power to be necessary or proper, but so that there be reserved on every such lease the best rent or rents, renders, royalties, and reservations by the ton, acre, or otherwise, and if thought proper variable in amount according to the minerals or substances actually got or made merchantable or sold, or the acreage worked, [without taking anything in the nature of a fine or premium,], [or, having regard, &c., as in form XLIII.], and so as there be contained in every such lease a condon of re-entry for non-paymt or non-delivery, within reasble times to be therein specified, of the rent or rents, renders, royalties, and reservations thby reserved, and so as the lessee or lessees do execute a counterpart thof, and do thby covenant for the due paymt or delivery of the rents, renders, royalties, and reservations thby reserved, [but so that the execution of the lease, &c., as in *preceding form*.].

Power to grant leases of easements (h). XLVII. AND ALSO (g) to grant way-leaves, water-leaves, and other easemts, rights, or privileges of any nature over the hereds and premes hby settled, or any pt thof, for any

lease of the hereds and premes comprised in such reversionary lease, and to cease at any time not later than sixty years from the date of such reversionary lease."

(g) See p. 593, note (a).

As to leases of easements under Settled Land Act. (h) Leases of easements may be granted under the Settled Land Act, 1882, s. 6, for a term not exceeding 99 years for a building lease, 60 years for a mining lease, and 21 years in the case of any other lease; see also as to easements in connection with mining purposes, s. 17, p. 595, note. By s. 3 and 17 an easement or right of any kind over the settled land may be created by way of sale.

term of years not exceeding [ninety-nine] years, to take effect in possession, or within six calendar months from the date of the grant (a), upon such conditions as may be thought proper, [but so that nothing in the nature of a fine or premium be taken for the same], [or, having regard to any fine or premium, &c., as in form XLIII.].

XLVIII. AND ALSO (b) to make allowances to, and arrangements with tenants, and to accept a surrender of any lease or tenancy for the time being affecting the whole or any part of the hereditaments and premises hereby settled, and so that if any lease shall be granted under any of the powers hereinbefore contained on the surrender of a then existing or prior lease or tenancy, the value of the interest surrendered or the tenant's right or claim to compensation for improvements or otherwise in respect of such lease or tenancy, may be taken into account in fixing the rent and other terms of the new lease.

Power to accept surrenders of leases, and to take value of surrendered lease into account on granting a renewal (c).

XLIX. AND ALSO (b) to grant in fee simple any part or parts of the said hereditaments and premises hereby settled to any person or persons who shall erect any new building thereon, or rebuild, repair, or improve any then existing building thereon, or in

Power to make grants in fee on chief rent

(a) If reversionary leases are authorised insert here, "or for any term of years to commence on the expiration of any then existing lease of the hereditaments over which any such easement or right is granted by such reversionary lease, and to cease at any time not later than ninety-nine years from the date of such reversionary lease."

Variation for reversionary leases.

(b) See p. 593, note (a).

(c) The Settled Land Act, 1882, by s. 13, gives to the tenant for life power to accept, with or without consideration, a surrender of any lease in respect of the whole or any part of the land leased, with or without an exception of all or any of the mines and minerals, or in respect of mines and minerals, or any of them; and on a surrender of part only of the land or mines and minerals leased to apportion the rent; and to make a new lease of the land or mines and minerals surrendered, or of any part thereof, which may comprise additional land or mines and minerals, and may reserve any apportioned or other rent; and the value of the lessee's interest in the lease surrendered may be taken into account in determining the amount of the rent, and of any fine, and the covenants and provisions of the new lease; but the new lease must be in conformity with the Act.

Powers of Settled Land Act as to surrenders of leases.

for building purposes (c).

any other manner substantially improve the same, and permanently improve the value thereof, or shall covenant or agree so to do within such a specified time after the date of the grant as shall in each case be deemed reasonable, together with any such liberties, powers, easements, and rights, and subject to any such exceptions, reservations, restrictions, obligations, covenants, and conditions as the person or persons exercising this power shall think expedient, so as in any such grant there be reserved and made payable in perpetuity out of the premises granted, to such uses upon such trusts and subject to such powers and provisions as the premises thereby granted would have stood limited and subject to under these presents if such grant had not been made, the best yearly rent or rents either improved or not (and so that a peppercorn or other nominal rent may be made payable during all or any part of the first five years) which can be reasonably obtained [without taking anything in the nature of a fine or premium], [or, having regard to any fine or premium taken, and so that any fine or premium shall be paid, &c., as in form XLIII.], [and so as there be contained in every such grant a power of entry and receipt of rents and profits in case of non-payment within a reasonable time, to be therein specified, of the rent or rents thereby reserved (d)], and so as every grantee do execute a duplicate or counterpart of the grant, and do thereby covenant for the due payment of the rent or rents thereby reserved; AND FURTHER, that it shall be lawful for the person or persons for the time being entitled to exercise the power lastly hereinbefore contained to grant in fee simple to any person or persons who shall be entitled to any land under any such grant, any additional plot or plots of land of not greater yearly value than £—— in each case, adjoining or contiguous to the land to which such person or persons shall be so entitled as aforesaid, and suitable to be held therewith or with any building thereon, as a

And to grant adjoining plots as gardens &c.

(c) This power, which would often be required in some districts, such as Manchester, is not given by the Settled Land Act, 1882, without an order of Court (see s. 10, p. 594, note).

(d) The part in this bracket may be omitted, see the Conv. Act, 1881, s. 44.

garden, pleasure ground, or other accommodation or convenience, without requiring the grantee to build upon or otherwise improve such additional plot of land, so that the rent to be reserved in every such grant of an additional plot of land shall be made payable not only out of such additional plot, but also out of the land to which the same shall be adjoining or contiguous as aforesaid, and the buildings thereon, and so that in all respects save as aforesaid, every such grant of an additional plot of land shall be made subject to the same conditions as a grant under the power last hereinbefore contained; And further that the person or persons for the time being entitled as aforesaid, may accept and take reconveyances of any hereditaments which shall have been granted in exercise of the said power, such reconveyances to be made to enure to the uses, upon the trusts, and with and subject to the powers and provisions hereby declared and contained concerning the hereditaments to be reconveyed.

To take
reconvey-
ances.

L. AND ALSO (e), to appropriate and lay out, or to authorise the lessee or lessees, or grantee or grantees in any lease or grant in fee made under any of the powers of these presents [or the Settled Land Act, 1882], to appropriate and lay out any part or parts of the hereditaments

Power to
lay out pro-
perty for
building
(f).

(e) See p. 593, note (a).

(f) The Settled Land Act, 1882, s. 16, provides that on or in connection with a sale or grant for building purposes or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof, (i.) may cause or require any parts of the land to be appropriated and laid out for streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving, or other works necessary or proper in connection therewith, and (ii.) may provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement, or other trustees, or any company or public body, on trust or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and (iii.) may execute any general or other deed necessary or proper for giving effect to the above provisions (which may be enrolled in the central office of the Supreme Court), and thereby declare the mode, terms, and conditions of the appropriation, and the manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

Provisions
of Settled
Land Act
as to lay-
ing out
roads, &c.

These statutory powers are probably sufficient for ordinary purposes, As to ex-

and premes hby settled [other than and except, &c.,] as sites for, and to erect, build, and make thereon at the cost of the trust este, or to authorise any such lessee or lessees as afsd, to erect, build, and make thereon, any churches, chapels, schools, or other buildings, parks, squares, gardens, or other open spaces, roads, paths, sewers, drains, water-courses, water-works, water-pipes, gas-works, gas-pipes, or any other works which may tend to the adaptation, improveint, or developmt of the hereds hby settled, or any pt or pts thof, as a building este, and either to dedicate the same to the public or to convey or demise the same in fee simple or for any term of years to any corporation or public body or authority for any pposes for which they are or may be authorised to accept the same, or to any psons as trees upon any trusts to be decl'd concerning the same for the public or for the residents on or lessees of the hereds and premes hby settled, or any pt or pts thof, or the residents on or owners of any adjoining ppty, or to demise the same to any such lessee or lessees as afsd, and so that any such conveyance or demise may be made either gratuitously or for such conson in money, either in gross to be received by the sd trees or tree, and applied as if the same had arisen from a sale of the sd premes, or by way of rent to be received by the pson or psons for the time being entled to the rents and profits of the sd premes, or in land, easemts, rights, or hereds to be conveyed or assured to the uses or upon the trusts of these presents as if the same had been pchased with monies arising from a sale of the sd premes, or otherwise to be annexed in enjoymt to the hereds for the time being settled to the uses of these presents, or some pt or pts thof, or partly for one or partly for any other of such

tending
statutory
powers.

but the clause in the text extends to other matters not provided for by the Act. It seems that any expenditure in making roads, &c., in connection with the conversion of the land into building land, being among the improvements specified in the Settled Land Act, 1882, s. 25 (xvii.) could not be made under the Act except in accordance with s. 26; but this expenditure is authorised by the clause in the text.

The power in the text may if desired be given to the donee of the statutory powers by way of extension of such powers, see p. 546, note.

consens, and with such reservations and restrictions and generally upon such terms as the person or persons exercising this power shall think fit.

LI. AND ALSO (g) to enter into, alter, vary, and rescind agreements for or in relation to the exercise of the several powers hereinbefore contained of leasing [and making grants in fee of] the hereditaments and premises hereby settled, [or of easements and other rights over the same,] and to agree for the apportionment of an entire rent between different parts of the property to be leased [or granted,] and so that, on such apportionment being made, the requirement that the best yearly rent or rents be reserved [having regard to any fine or premium taken] as aforesaid shall apply to the aggregate of the rents reserved by the leases or grants, and not to the rent reserved by any one lease or grant, but no lease to be granted in pursuance of any such agreement shall be granted for a longer term than could have been granted if such lease had been granted at the date of such agreement.

Power to enter into contracts for leases, &c. (a).

LII. AND ALSO (g) to accept leases of any lands or hereditaments, or of easements, rights, or privileges of any nature to be held with or annexed in enjoyment to the hereditaments and premises hereby settled, or any part thereof, for such periods or duration, and upon such terms and conditions as the person or persons exercising this present power shall think fit, and so that any such lease shall be granted to the said trees or tree, or if granted to any other person or persons, shall be assigned to the said trees or tree, and the premises therein comprised shall, so far as the tenure or nature thereof will admit, be subject to the same uses, trusts, powers, and provisions as the hereditaments with or in connection with which the same shall be held, except that the same shall be subject to the like provisions as to the absolute vesting and devolution thereof as the hereditaments held by leases for years hereby settled [to be purchased with monies arising from a sale of the hereditaments]

Power to accept leases of easements (b).

(g) See p. 593, note (a).

(a) As to the powers given by the Settled Land Act, 1882, of entering into, varying and rescinding contracts, see s. 31, p. 543, note.

(b) This power, which is not given by the Settled Land Act, 1882, may be occasionally useful on mining estates.

hby settled]; And the rents reserved by any such lease shall be paid, and the pson or psons in whose name or names such lease shall be taken shall be indemnified in respect of such rents and the covenants therein contd, out of the rents and profits of the premes hby settled.

Power to
grant
licenses to
copy-
holders (b).

LIII. AND ALSO (c) to grant to any copyholder or customary tenant of any manor for the time being subjt to the subsisting uses of these presents, license in writing to build upon or otherwise improve his tenemt, or any pt of the waste of the sd manor, and to make roads or streets in, through, or upon the same, and to annex the same or any pt thof to adjacent ground for the ppose of improvemt, and to pull down any of the messuages or buildings which now are or hereafter shall be on such tenemt, and to demise all or any pt of such tenemt or of such waste for any term of years not exceeding twenty-one years, or for building, improving, or repairing pposes, not exceeding [ninety-nine] years, to commence from or within six calendar months from the granting of such license, or for any one or more of the pposes afsd : And also to fix the annual value during the term mentd in such license, whereon fines, fees, and other annual paymts are to be assessed or the amount of such fines, fees, or paymts, and so that every such license shall be entered on the court rolls of the manor.

Commence-
ment of
powers of
sale and
exchange,
enfranchisement,
partition,
&c., in an
ordinary
strict set-

LIV. AND IT IS HBY AGRD that it shall be lawful for the sd, trustees, or the [survors or] survivor of them, or the exs or ads of such survivor during the life of the sd, husband, with his consent in writing, and after his decease, and during the minority of any son [or daughter] of the sd intd marre, who, if of full age, would for the time being be entled to the possession or rect of the rents and profits of the hereds

(b) A tenant for life under the Settled Land Act, 1882, may by sec. 14 grant to a copyholder a license to make such lease as the tenant for life is by the Act enabled to grant of freeholds; the license may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amounts of such fines, fees, or payments, and is to be entered on the Court Rolls.

(c) See p. 593, note (a).

and premes hby settled [or of any undivided share or shares ^{tlement} thof (e)] at the discretion of the sd trees or tree for the ^{on mar-} time being, to, &c. (f). ^{riage (d).}

(d) By the Settled Land Act, 1882, s. 3, a tenant for life (including any Powers of other limited owner having the powers of one) is empowered :—1. To sell the settled land (which includes incorporeal hereditaments, see s. 2) or any easement or right over or in relation to the same. This it is conceived not only authorises the creation by way of sale of any easement or right over the settled land for the benefit of adjoining land, but also the release, by way of sale, of an existing easement or right over adjoining land held with and forming part of the settled land. 2. Where the settlement comprises a a manor to sell the seignory of any freehold land or enfranchise any copyhold or customary land within the manor, with or without an exception or reservation of all or any of the minerals, or any rights relative to mining purposes. 3. To exchange the settled land for other land. 4. Where the settlement comprises an undivided share or under the settlement the land has come to be held in undivided shares, to make partition; and money may be paid or received for equality of exchange or partition. By s. 18 any money so required may be raised by the tenant for life by mortgage. <sup>sale, enfranchise-
ment, ex-
change, and parti-
tion in
Settled
Land Act.</sup>

By s. 4 the sale must be at the best price and the exchange or partition for the best consideration in land or in land and money that can reasonably be obtained; and the Act gives the usual subsidiary powers; and on a sale, exchange, or partition authorises the making of reservations or imposition of restrictions “with respect to building on or other user of land, or mines or minerals, or any other thing, to be made binding by covenant, condition, or otherwise on the tenant for life and the settled land or any part thereof, or on the other party and any land sold or given in exchange or on partition to him.” <sup>Subsidiary
provisions.</sup>

An enfranchisement may be made with or without a regrant of any right of common or other right or easement. Land in England is not to be exchanged for land out of England.

By s. 17 a sale, exchange, or partition may be made of land with an exception or reservation of all or any of the mines and minerals, or *vice versa*, and with or without a grant or reservation of powers of working, wayleaves, or other easements or rights for or connected with mining purposes in relation to the settled land or any other land. Under the previous law this could not be done without an express power or the sanction of the Court under 25 & 26 Vict. c. 108, or the Settled Estates Act, 1877, s. 19. <sup>As to sales,
&c., of sur-
face and
minerals
apart.</sup>

Power is also given on a sale, exchange, or partition to shift incumbrances <sup>As to
incum-
brances.</sup>

(e) The words in brackets to be inserted where there is a limitation to tenants in common. See the provision in form LXVI., as to this case.

(f) If there are several powers given to the trustees, it may be convenient to continue as follows, “to exercise the powers following (that is to say), FIRST, a power to, &c.; SECONDLY, a power, &c.”

The same where there are various **LV. AND IT IS HBY AGRD**, that it shall be lawful for the sd, *trustees*, or the [survors or] survivor of them, or the exs or ads

with the consent of the incumbrancer, to other parts of the settled land, s. 5, and see s. 24 (4, 5, 6).

As to mansion, &c. By s. 15 the principal mansion house and the demesnes thereof and other lands usually occupied therewith are not to be sold without the consent of the trustees or an order of Court.

As to undivided shares. By s. 19 the tenant for life of an undivided share may concur with the owner of or person having power of disposition over any other undivided share for any purposes of the Act.

As to conveyances. The tenant for life is by s. 20 invested with full powers of executing conveyances to effect any sale or other disposition.

Laying out roads, &c. As to laying out roads, &c., on a sale for building purposes, see s. 16, and p. 599, note.

Investment of sale and other money. By s. 22 capital money arising from a sale or otherwise is to be paid either to the trustees or into Court at the option of the tenant for life; and in the former case is to be invested or applied according to his direction, and in default thereof at the discretion of the trustees, but in the last-mentioned case, subject to any consent required or direction given by the settlement with respect to the investment or other application of the trust money. The investment by the Court is to be made on the application of the tenant for life or the trustees. The investment is not to be altered during the life of the tenant for life without his consent. Capital money arising under the Act is to devolve as land in the same manner as the land from which the money arises would, if not disposed of, have devolved.

Statutory modes of investment.

The investments authorised by the Act (s. 21), (subject to any claims properly payable out of the money and to the special object for which it was raised), are—(1) Securities authorised by the settlement or the general law plus debentures or debenture stock of any railway company in the United Kingdom which has for 10 years paid a dividend on its ordinary stock or shares. (2) The discharge of incumbrances. (3) Payment for improvements authorised by the Act. (4) Payment for equality of exchange or partition. (5) The purchase of the seignory of settled freeholds or enfranchisement of copyholds. (6) The purchase of the freehold or reversion of settled leaseholds. (7) The purchase of land (which includes any hereditaments corporeal or incorporeal) freehold, copyhold, or leasehold held for a term of at least 60 years, with or without the minerals (but not out of England unless authorised by the settlement, s. 23). (8) The purchase of the fee or a term of at least 60 years of mines, minerals, or easements, or rights for mining purposes, convenient to be held with the settled land. (9) Payment to a person absolutely entitled. (10) Payment of costs, &c. (11) Any other investment authorised by the settlement.

As to the power given by s. 33 to invest other monies of the settlement in like manner, see p. 544, note.

Special provision is made by s. 34 as to the application of the purchase-money on the sale of a lease or reversion.

Settlement By s. 24 (1, 2, 8), freehold land acquired by purchase, exchange, or partition

of such survivor during the life of any person (g) who under the limitations hereinbefore contained, shall for the time being be beneficially entitled to the possession or receipt of the rents and profits of the hereditaments hereby settled as tenant for life with his [or her] consent in writing, and also during the

limitations
for life and
in tail.

is to be conveyed to the uses, &c., which, under the settlement or by the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase charges, or powers of charging; and copyhold, customary, or leasehold land is to be conveyed to and vested in "the trustees of the settlement" (as defined by the Act, see *infra*) on trusts, &c., corresponding, as nearly as the law and circumstances permit, with the uses, &c., to which freehold land is to be conveyed as aforesaid, so, nevertheless, that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, or in tail male, or in tail female, and who dies under the age of twenty-one years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go.

of land
purchased,
taken in
exchange,
&c.

Power is given by s. 31 to tenant for life to enter into, vary, and rescind contracts for any of the purposes of the Act, which are to be binding on and enure for the benefit of his successors in title.

As to the general provisions of the Act, see p. 541, note; as to the omission of express powers in reliance on it, see p. 546, note; and as to extending the statutory powers, see p. 547, note. The consent of the tenant for life is usually required to the exercise of the express powers of sale, &c., which is in accordance with the requirement of s. 56 of the Act.

The Act does not give power to sell or enfranchise for a rent-charge, or to charge a rent for equality on an exchange or partition, which is sometimes given by settlements; but such a power is seldom wanted, except as to grants at fee-farm rents for building, for which a special power should be given, see p. 597.

As to
power to
sell for
rentcharge.

A very short power of sale and exchange was sometimes given in reliance on the provisions of Lord Cranworth's Act, 23 & 24 Vict. c. 145, Part I. These provisions having been repealed by the Settled Land Act, and no corresponding provisions substituted, this cannot now be done, but the provisions of the latter Act are of course much more efficacious.

As to the
repealed
provisions
of Lord
Cran-
worth's Act
relating to
powers of
sale.

(g) Where the form of Name and Arms Clause above, p. 564, is used, say "any person of full age for the time being beneficially entitled under these presents to the possession or receipt of the rents and profits of the hereditaments hereby settled for any legal or equitable estate of freehold by purchase, with his or her consent in writing, and during the minority of any person who if of full age would be entitled as aforesaid, at the discretion of the said trustees or trustee for the time being, to, &c."

minority of any pson who, under the limitations hinbefore contd, would, if of full age, be for the time being beneficially entled to the possion or rect of the rents and profits of the same premes [or of any undivided share or shares thof] as [tenant for life or] tenant in tail male [or in tail] by pchase at the discretion of the sd trees or tree for the time being, to, &c. (a).

Power to
sell or ex-
change (b).

LVI. To SELL or exchange for other manors, messuages, lands, tenemts, or hereds situate in England or Wales, all or any pt of the hereds hby settled, and upon any such exchange to give or receive money either in gross, or by way of rent for equality of exchange.

Power
to parti-
tion (d).

LVII. AND ALSO (c) to concur with the pson or psons for the time being seised of, or entled to, or having power in that behalf over or in relation to the other undivided share or shares of or in any hereds of which an undivided share or shares is or are hby settled, in making a partition of the same hereds, or any pt thof, [and that notwithstanding that any of the sd trees, or a sole tree, may be entled to, or interested in, any share or shares of or in the same, (e)] and to give or receive money either in gross or by way of rent for equality of partition.

Power to
sell, &c.,
surface and
minerals
separately
(f).

LVIII. AND ALSO to make any such sale, or exchange, [or partition] as afsd, of the surface only of any such hereds apart from and without the mines and minerals, or any of the

(a) See page 603, note (f).

(b) For the remaining clauses of the full power of sale and exchange, see forms LVIII., LIX., LXIII., LXVI., LXVII., LXVIII., LXIX., and LXX., some of which are, of course, exceptional. As to the statutory power, see p. 603, note.

(c) If it should be necessary to make a new commencement in any of the powers given to the trustees, say, "AND IT IS HBY FURTHER AGRD that it shall be lawful for the sd, trustees, or the [survors or] survor of them, or the exs or ads of such survor, with such consent or at such discretion as afsd, &c."

(d) For the remaining clauses of the power to partition, see forms LVIII., LXIII., LXV., LXVII., LXIX., and LXX. As to the statutory power, see p. 603, note.

(e) See p. 471, note (f).

(f) See as to this, p. 603, note.

mines and minerals in, under, or upon the same, or of such mines and minerals or any of them apart from and without the surface of such hereds, and with or without a reservation or grant of any rights of searching for, getting, working, carrying away, and disposing of the same mines and minerals, and any other rights or easemts incidental thto.

LIX. AND ALSO either at the time of or previously to any such sale to enter into any covenants or arrangemts, or to cause any purchaser to enter into any covenants or arrangemts, restrictive of erecting buildings or regulating the position or value of buildings to be erected on the hereds hby settled or any pt thof or otherwise restrictive of the user of any such hereds, or any buildings for the time being thereon, whether sold or intd to be sold or not, or in respect of making, repairing, or maintaining roads, sewers, or fences, or other like matters, or any other arrangemts which may be deemed expedient for adapting or developing the sd hereds or any pt thof as a building este. Special power as to building land (g).

LX. AND ALSO to enfranchise (b) any copyhd or customary tenemt holden of any manor hby settled, with or without a regrant of all or any of the rights of common, and other rights, liberties, or privileges appendant or appurtenant to or held or enjoyed with such tenemt, and with or without a reservation of all or any of the mines and minerals thereunder, or any other reservations, for such conson in money, either in gross, or by way of rent, or for such conson in land, or partly for one and partly for another or others of such consons and in such mner as the sd trees or tree shall think fit. Power of enfranchisement in settlement of a manor (a).

(g) This is provided for in case of a sale under the Settled Land Act, 1882, by s. 4 (6) of the Act; see p. 603, note.

(a) For the remaining clauses of the power of enfranchisement, see forms LXIII., LXVI., LXVII., LXVIII., LXIX., and LXX. As to the statutory power, see p. 603, note.

(b) Where an undivided share of a manor is settled, say, "or concur in enfranchising," and "any manor an undivided share or shares of which is or are hby settled."

Power to
grant ease-
ments (c).

LXI. AND ALSO to grant or create any easemts or other rights or privileges of any nature over or in relation to the hereds hby settled or any pt thof for such conson in money either in gross or by way of rent or for such conson in land, or the grant or creation of an easemt or other right or privilege over or in relation to land, to be annexed in enjoymt to the hereds hby settled or any pt thof, or partly for one and partly for another or others of such consons, and generally upon such terms and in such mner as the sd trees or tree shall think fit.

Power to
purchase
easements
(d).

LXII. AND ALSO to pchase or accept any easemt or other right or privilege of any nature over land, to be annexed in enjoymt to the hereds hby settled or any part thof, for such conson in money either in gross or by way of rent, or for such conson in land or the grant of an easemt or other right or privilege over the hereds hby settled, or any pt thof, or partly for one and partly for another or others of such consons and generally upon such terms and in such mner as the sd trees or tree shall think fit.

Power to
sell, &c.,
subject to
conditions
(e).

LXIII. AND TO make any such sale as afsd, either by public auction or private contract, and to make or agree to any stipulations or provons as to title, or evidence or commencement of title or otherwise, in any condons of sale or contract for sale or exchange, [partition or enfranchisemt, or for the grant or acquisition of any easemt or other right or privilege,] and to buy in at any sale by auction, and rescind or vary any contract and to enter into any new

(c) For the remainder of this power, see forms LXIII., LXVI., LXVII., LXVIII., LXIX., and LXX. See also the corresponding provision in connection with the leasing powers, p. 596. As to the statutory power, see p. 603, note. The power in the text goes beyond that power in authorising the consideration to be a rent.

(d) For the remainder of this power, see forms LXIII., LXV., LXVI., LXVII., and LXX. The power to purchase land in the Settled Land Act, 1882, s. 21 (vii.), extends to easements and other rights over land (and as to mining easements, see sub-d. viii.); but does not authorise the consideration to be a rent. As to the creation of easements by way of use, see the Conv. Act, 1881, s. 62.

(e) This, so far as regards sales, is provided for by the Conv. Act, 1881, s. 35.

contract for any of the ppses afsd, without being responsible for loss.

LXIV. AND ALSO from time to time to renew any lease or grant of any hereds for the time being subjt to the uses or trusts of these presents, and to pay the fines and expenses of such renewal, but without altering the equities or obligations of the several psons interested as to the mode in which the same ought ultimately to be paid or borne, and any such renewed lease or grant shall be subjt to the same uses, trusts, powers, and provons as the original lease or grant. Power to renew leases (f).

LXV. AND ALSO to raise on mtge of the hereds hby settled, or for the time being subjt to the subsisting uses or trusts of these presents, or any pt or pts thof, all or any monies which [may be raiseable under the trusts of any term hinbefore limited, or which may be charged or become raiseable by virtue of any of the powers hinbefore contd, or which] may be payable or required for equality of exchange [or partition, or for obtaining the enfranchisemt of any hereds of copyhd or customary tenure for the time being subjt to the uses or trusts of these presents, or for the pchase or acquisition of hereds of any tenure or any easemt or other right or privilege hby [or by statute] authorised to be pchased or acquired, or which may be required for the ppose of effecting any of the permanent improvemts hby authorised, or for the renewal of any lease or grant for the time being subjt to the uses or trusts of these presents, or for discharging or consolidating any charges or incumbrances affecting any hereds of any Power to raise money on mortgage (g).

(f) For the remainder of this power, see forms LXV., LXVII., and LXX. The Settled Land Act, 1882, does not extend to this. Renewable leaseholds being much less common than formerly, the special provisions as to them might usually be omitted; see 3 Dav. Prec., p. 605 *et seq.*

(g) For the remainder of this power, see form LXVII. The Settled Land Act, 1882, s. 18, gives the tenant for life power to raise money for enfranchisement or equality of exchange or partition by mortgage in fee or for a term; and ss. 40 and 54 contain the necessary provisions for the protection of the mortgagee. The power in the text (and compare form XXVIII., p. 575), authorises the raising of money for other purposes; and might conveniently be given to the tenant for life by way of extension of the statutory power under s. 57. As to the statutory power of mortgaging.

tenure for the time being subj't to the uses or trusts of these presents,] [or which may otherwise be required for any ppose for which capital monies arising from a sale of the sd premes are hby or by statute authorised to be expended], [or for the paymt of any expenses incurred by the sd trees or tree in or about the managemt protection or preservation of the hereds for the time being subj't to the uses or trusts of these presents, or otherwise in the exercise of the trusts or powers of these presents, which the sd trees or tree shall think fairly chargeable against the inheritance of the sd premes, including the expense of opposing any application to parliamt for any bill which they or he may consider prejudicial to the sd premes or any pt thof, and which expense they or he are or is hby authorised to incur], and so that no mtgee advancing money on a mtge purporting to be made under this present power shall be concerned to see that such money is wanted or that no more than is wanted is raised, and to secure the repaymt of any monies so raised as afsd with interest, at such rate as may be thought proper, by a mtge for any term of years or in fee simple of the hereds to be charged thwith, and either with or without a power of sale, and with such other powers and provons and upon such terms in all respects as may be deemed expedient.

Power in settlement of an undivided share to concur with co-owners in selling, &c. (h).

LXVI. AND ALSO to concur with the pson or psons for the time being entled to or having power in that behalf over or in relation to the other undivided pt or share, pts or shares, of any hereds of which an undivided share or shares is or are hby settled, in exercising all or any of the powers hinbefore contd of sale and exchange, [enfranchisemt and granting or pchasing or accepting grants of easemts or other rights,] and so that any pchase or conson monies arising therefrom [or paid in respect thof], and any expenses

(h) As to the exercise of the powers of the Settled Land Act in this case see s. 19. The provision at the end of this clause as to apportionment, &c., is not in the Act.

or outgoing may be apportioned after the same shall have been received, paid, or incurred, [and that notwithstanding that any of the sd trees, or a sole tree, may be entled to or interested in any of the other pts or shares of the same premes (a).]

LXVII. AND ALSO for any of the pposes afsd, by any deed and deeds, to revoke all or any of the uses, trusts, powers, and provons, hinbefore limited, decl'd, [and contd, or to be limited or created under any of the powers hinbefore contd of charging jointures [rent-charges] and portions, of and concerning the hereds and premes comprd in, or affected by, any such sale, exchange, [enfranchisemt, partition, mtge], or other dealing as afsd, but subj't to every mtge made under the trusts of any term of years hinbefore limited, or to be limited or created under any of the powers hinbefore contd, or any statutory power (b), and to any mtges or leases [easemts or rights] made or granted under the respive powers hinbefore contd, or any statutory power (c), and by the same, or any other deed or deeds, to limit or appoint any uses, trusts, or estes, of the sd premes, or any pt thof, which may be thought expedient, and generally for any such ppose as afsd, to execute and do all such assurances and things as the sd trees or tree shall think fit.

LXVIII. PROVD ALWAYS, AND IT IS HBY AGRD that the several powers of leasing, making allowances to and ar-rangemts with tenants, accepting surrenders of leases and tenancies, [appropriating and laying out, or authorising other psons to appropriate and lay out sites, making agreemts for leases, accepting leases, granting licences to copyholders], and of sale and exchange, [and enfranchisemt, and granting and pchasing and accepting grants of easemts and other

Power to execute assurances, &c.

Provision as to exercise of powers of sale, &c., where there is a limitation to tenants in common in tail or in fee (d).

(a) See p. 471, note (f).

(b) This refers to the Conv. Act, 1881, s. 44 (4); see p. 557, note.

(c) This refers to the powers of the Settled Land Act, 1882.

(d) This clause would prevent doubt as to the exercise of the powers where one of the tenants in common under the settlement is a minor. Compare the provisions of the Settled Land Act, 1882, s. 19. The powers might before the

As to leases, sales, &c., where there

rights,] hinbefore contd shall be exerciseable during the minority of any pson who, under the limitations hinbefore contd, would for the time being, if of full age, be beneficially entled to the possion or rect of the rents and profits of any undivided share of the hereds hby settled, with the concurrence of the pson or psons of full age (if any), who under such limitations shall for the time being be beneficially entled to the other undivided share or shares thof, or any of such shares, or who shall otherwise have power in that behalf.

Declaration
as to ap-
plication
of rents
reserved on
exchanges,
&c.

LXIX. AND IT IS HBY AGRD that all annual rents which shall be reserved upon any [sale] exchange, partition, enfranchisemt, grant of any easemt or other right, or appropriation (e) under the powers hinbefore contd, shall be so reserved and settled that the same shall be received and enjoyed by the pson or psons who, under the limitations hinbefore contd would, for the time being, be entled to the possion or rect of the rents and profits of the hereds hby settled.

Trusts of
sale monies,
&c. (f).

LXX. AND IT IS HBY AGRD that all capital monies which shall arise from any such sale [enfranchisemt, grant of any easemt or other right, or appropriation (e)], or be receivable for equality on any such exchange [or partition] as afsd,

is a limi-
tation to
tenants in
common.

Act have been validly made exerciseable over the entirety without the concurrence of the adult tenants in tail (see 3 Dav. Prec. 576), but s. 56 of the Act appears to prevent this. It seems that the trustees could not sell the share of the infant alone under the statutory power, see Wolstenholme & Turner on the Act, 12.

(e) See p. 599, form L.

As to the
investment
of capital
monies of
the settle-
ment.

(f) Inasmuch as by the Settled Land Act, 1882, s. 33, all capital monies of the settlement in the hands of the trustees which are liable to be invested in the purchase of land may, "at the option of" the tenant for life, be invested or applied in any of the modes provided by s. 21 (see p. 604, note); and, as the power so given to the tenant for life to direct the investment or application cannot be excluded or controlled by the settlement, it seems useless to insert any trust for investment of capital monies arising from sales, &c., under the express powers, of a more limited scope than the statutory power. But this may of course be extended. The trust in the text appears to be in conformity with the Act, but it might be shortened by omitting any specific mention of the statutory investments comprised in s. 21.

[and all fines on leases] shall be received by the sd trees or tree, and shall be applied by them or him during the lifetime of any pson of full age for the time being beneficially entled under the limitations hinbefore contd to the possion or rect of the rents and profits of the premes hby settled for any legal or equitable este of freehd by pchase by the direction of such pson, and at any other time, or in default of any such direction, at the discretion of the sd trees or tree (after paymt of costs and expenses) in mner following, that is to say, in or towards the paymt or discharge of any money which may be payable for equality on any such exchange [or partition] as afsd, [or for the pchase of any easemt or other right or privilege hinbefore authorised to be acquired,] [or for the fines or expenses on the renewal of any lease or grant for the time being subjt to the uses or trusts of these presents, but without altering the equities or obligations of the psons interested as to the mode in which such fines or expenses ought ultimately to be paid or borne (g),] or in or towards the paymt or discharge of any mtge or incumbrance for the time being affecting all or any of the hereds of whatever tenure for the time being subjt to the uses or trusts of these presents, or in the pchase of any freehd or copyhd [or leasehd] manors, messuages, lands, tenemts, or hereds to be situate in England or Wales [such copyhd or leasehd hereds being contiguous to, or convenient to be held with the hereds for the time being subjt to the uses or trusts of these presents, or some pt or pts thof, and such leasehd hereds having not less than 60 years unexpired at the date of the pchase,] [or in pchasing the enfranchisemt of any hereds of copyhd or customary tenure for the time being subjt to the trusts of these presents,] [or if the sd trees or tree in their or his discretion shall deem the same to be for the permanent benefit and improvemt of the hereds for the time being subjt to the uses or trusts of these presents, or any pt thof, in or towards the paymt of the expenses of

(g) See p. 609, note (f).

the appropriation and laying out of the sd hereds, or of the erection, building, or making of any buildings or works under the powers hinbefore contd, or in or towards the paymt of the expenses of any such permanent improvemts as are hby authorised,] or in or upon any stocks, funds, or secs in or upon which trust funds may for the time being be authorised by law to be invested (*h*), [or in or upon, *other investments*,] or in any other mode in which capital monies arising under the Settled Land Act, 1882, are thby authorised to be invested or applied, with power from time to time by such direction or at such discretion as afsd to vary or transpose such investmts as afsd into or for others of any nature hby authorised: AND IT IS HBY FURTHER AGRD that the hereds to be pchased or taken in exchange [or on partition or enfranchisemt] as afsd shall be assured and settled in mner following, but not so as to increase or multiply charges, or powers of charging, (that is to say), as to such of the sd hereds as shall be of freehd tenure, to, upon, with, and subjt to such of the uses, trusts, powers, and provons herein decl'd and contd concerning the [freehd] hereds hby settled as shall be then subsisting or capable of taking effect, and as to such of the sd hereds as shall be of copyhd, customary, or leasehd tenure, upon, with, and subjt to such trusts, powers, and provons, as shall, having regard to the tenure of the ppty, most nearly correspond with such of the uses, trusts, powers, and provons hinbefore decl'd and contd concerning the [freehd] hereds hby settled as shall be then subsisting or capable of taking effect, but so that any of the sd hereds which shall be of leasehd tenure shall not vest absolutely in any pson hby made tenant in tail [male, or in tail] by pchase, unless he [or she] shall attain the age of twenty-one years, but on his [or her] death under that age shall go and devolve as if the same had been freehds of inheritance hby settled, [and so that proper provons shall be inserted in such settlemt for the renewal of any renewable

(*h*) See p. 435, note.

lease or grant, and for raising the fines and expenses of such renewals out of the hereds held on such renewable lease or grant, or otherwise, but so that the several psons interested may contribute to such fines and expenses in the proportions and mode in which they would be bound to contribute according to the rules of equity (a).] And the annual income arising from any stocks, funds, and secs, in which any such monies as aforesaid may be invested, shall be paid or applied to such pson or psons, for such purposes, and in such manner as the rents and profits of the hereds to be purchased as aforesaid would be payable or applicable if such purchase and settlement as aforesaid were actually made.

LXXI. AND IT IS HEREBY AGREED that it shall be lawful for the *sd, donee or donees*, during the lifetime of the *sd A., or other specified period*, [with the consent or concurrence of the pson or psons (if any) whose consent or concurrence may be required in that behalf by virtue of the Settled Land Act, 1882, or otherwise] to exercise over or in relation to all or any of the hereds of whatever tenure for the time being subjct to the subsisting uses or trusts of these presents all such powers as are by the Settled Land Act, 1882, conferred upon tenants for life, and so that all the provisions of the *sd Act* which are subsidiary or incidental to such powers shall be deemed to apply, and to be incorporated in these presents as far as circumstances may admit, subjct nevertheless to the provisions herein contd; [AND ALSO (by way of extension or enlargement of the powers of the *sd Act*, and to the intent that the additional or larger powers hereinafter contd shall operate and be exerciseable in the like manner and with all the like incidents, effects, and consequences as if the same were conferred by the *sd Act*) the powers hereinafter contd (that is to say), &c.]

Clause giving express powers of leasing, sale, &c., by reference to Settled Land Act. Addition where larger powers are given (b).

LXXII. PROVIDED ALWAYS, and it is hereby agreed that in all cases

Declaration that

(a) See p. 609, note (f).

(b) This form may be used in any case in which the Act may not apply, or there is a doubt as to its application, see p. 591, note.

express powers are to operate independently of Settled Land Act (c).

in which powers and provons are contd in these presents for the same or the like pposes as the powers conferred by the Settled Land Act, 1882, on tenants for life, and the provons incidental thto, the powers herein contd, whether given to the pson or psons in whom such statutory powers shall for the time being be vested or not, and the provons incidental thto are intd to operate and shall as far as circes admit operate independently of and concurrently with the powers and provons for the same or the like pposes contd in the sd Act.

Provision as to extension of powers of Settled Land Act

LXXIII. AND IT IS HBY AGRD that all or any powers contd in these presents for pposes more extended or other than the powers of the Settled Land Act, 1882, whether given to the pson or psons in whom such statutory powers shall for the time being be vested or to the sd trees or tree, and all provons subsidiary or incidental to or connected with such respive powers, shall operate and take effect as far as the case may admit by way of extension and enlargemt of the powers and provons of the sd Act, and with all the like incidents, effects, and consequences as if the same or the like powers with the like incidental provons had been thby conferred upon tenants for life or the trees of the settlemt, as the case may be, but subjt to the provons herein contd.

The same. Another form. Addition where there may be no person having the powers of the Act (d).

LXXIV. AND IT IS HBY AGRD that it shall be lawful for the pson or psons (if any) in whom the powers of the Settled Land Act, 1882, shall for the time being be vested, in relation to the hereds hby settled or for the time being subjt to the subsisting uses or trusts of these presents, to exercise over or in relation to the same hereds and premes the powers hinafter contd, by way of extension or enlargemt, &c., as in *preceding form*, [and further that in case at any

(c) This clause may be added where express powers are inserted, if it should be thought desirable to declare the intention that the powers are to operate concurrently with the statutory powers, under s. 56, and not by way of extension of such powers under s. 57. In the opposite case one or other of the next two clauses should be inserted, see pp. 545, 546, note.

(d) See the last note.

time, and so long as there shall be no pson in whom such statutory powers shall be vested, it shall be lawful for the sd trees or tree in their or his absolute discretion to exercise over or in relation to the same hereds and premes the powers of a tenant for life in possion under the sd Act and all such extended or enlarged powers as afsd, and so that all the provons of the sd Act which are subsidiary or incidental to or connected with the powers therein contd shall as far as may be apply and take effect with respect to the powers hby given to the sd trees or tree].

LXXV. AND IT IS HBY AGRD that the leasing powers of the Settled Land Act, 1882, shall be extended so as to authorise leases or grants of the hereds and premes hby settled for any term, not exceeding for a building lease — years, for a mining lease — years, and for any other lease — years. And so as to authorise a lease for building pposes, or a lease or grant for mining pposes of any of the hereds and premes hby settled, to be granted for any term of years to commence on the expiration of any then existing lease or grant, and to cease at any time not later for a building lease than — years, and for a mining lease or grant than — years from the date of the reversionary lease or grant.

LXXVI. AND IT IS HBY AGRD that if any hereds hby settled or becoming subjt to the uses or trusts of these presents shall be held under leases or grants for a life or lives, renewable or usually renewed, such leases or grants shall be renewed from time to time as occasion may require and circes may admit, and that the fines and expense of such renewals shall be paid out of any capital monies arising under these presents, but not so as to alter the equities or obligations of the psons claiming under these presents, as to defraying the sd fines

(e) See the Act, s. 10. For a power to make grants on chief rent for building purposes, see p. 597. The clause in the text might be extended so as to include this.

(f) See p. 609, note (f).

and expenses, and so that all monies payable by such psons shall, when received, form pt of the sd capital monies.

As to fines
on renewal
of leases.

LXXVII. AND IT IS HBY AGRD that fines received on the renewal of any lease of any hereds hby settled or for the time being subj to the subsisting uses or trusts of these presents which is renewable by contract or custom shall be deemed to be income.

As to
mining
rents under
Settled
Land Act.
(a).

LXXVIII. AND IT IS HBY ALSO AGRD that no pt of the rent arising under any mining lease of any hereds for the time being subj to the uses or trusts of these presents shall be set aside as capital money under the Settled Land Act, 1882, or otherwise, but the whole thof shall go and be received and applied as rents and profits.

As to sale
or lease of
mansion,
house, &c.,
under
Settled
Land Act
(b).

LXXIX. AND IT IS HBY FURTHER AGRD that — House afsd, being the principal mansion house on the sd — este or any other mansion-house or principal residence for the time being subj to the uses or trusts of these presents, and the demesnes thof, and the lands usually occupied thwith resply may be sold, exchanged, or leased under the powers of the Settled Land Act, 1882, without the consent of the sd trees or tree, or any order of Court [and that such mansion house or residence may be let on lease or otherwise with or without all or any of the furniture and effects hby settled as heirlooms thwith].

Variation
where
furniture
is settled.

Power to
sell under
Settled
Land Act
for fee
farm rents
(c).

LXXX. AND IT IS HBY AGRD that the power of sale conferred by the Settled Land Act, 1882, and exerciseable in relation to the hereds hby settled, shall be extended so as to authorise a sale of all or any of the sd hereds, or any easemt, right, or privilege over or in relation to the same, in conson wholly or partially of a perpetual rent charge, payable yearly or half-yearly, to be secured either upon the hereds comprd in such sale, or on any other (d) hereds, and to be

(a) See the Act, s. 11, p. 553, note.

(b) See the Act, s. 15, p. 543, note.

(c) See the Act, s. 10.

(d) This may be convenient so as to enable an easement to be sold for a rent to be charged upon the property to which it is to be annexed in enjoyment.

limited to, upon, and subjt to the same uses, trusts, powers, and provons as the sd hereds hby settled, or as near thto as the difference in the nature of the ppty and other circes will admit.

LXXXI. AND IT IS HBY AGRD that the power of sale conferred by statute in relation to the hereds hby settled, shall be extended so as to include power to sell the right of next presentation to any ecclesiastical benefice, the advowson whof is hby settled.

Power to sell next presentation to a benefice.

LXXXII. AND IT IS HBY AGRD that any sale of all or any pt of the sd hereds may be made under the powers of the Settled Land Act, 1882, notwithstanding the existence of any terminable rent-charge on the same or any pt thof, which shall have been effected under the provons of any Act for or relating to the improvemt of land, and so that such sale may be made either subjt to such charge or upon the terms of the same being redeemed and paid off out of the pchase monies or otherwise.

Provision as to sale of land subject to a charge under the Lands Improvement Acts (c).

LXXXIII. AND IT IS HBY AGRD that any hereds hby settled or for the time being subjt to the uses or trusts of these presents may be exchanged under the Settled Land Act, 1882, for hereds situate in Ireland.

Power to exchange for land in Ireland (f).

LXXXIV. PROVD ALWAYS and it is hby agrd that the power of sale conferred by the Settled Land Act, 1882 [hinbefore contd] of or in relation to the hereds hby settled or for the time being subjt to the uses or trusts of these presents

Power to sell or grant sites for churches, schools, &c. (g).

(e) This clause is intended to meet a difficulty which has occurred in practice arising from the fact that, whether a terminable charge effected under the Lands Improvement Acts is paid off out of the purchase money or not, on a sale of the land, the tenant for life obtains a benefit at the expense of the remainderman, so that it is doubtful whether a good title can be made. But the difficulty might sometimes be removed by the charge being shifted to another part of the estates under the Settled Land Act, 1882, s. 5.

Effect of rent-charge under Lands Improvement Acts.

(f) See the Settled Land Act, s. 4 (8).

(g) Statutory powers authorising conveyances for many of the above purposes, in some cases gratuitously, exist. The following reference to the principal of these Acts, though to some extent out of place here, may be useful:—As to conveyances by private persons for a church, churchyard, parsonage house or glebe, see 43 Geo. III. c. 108, s. 1; 36 & 37 Vict. c. 50; 58

Acts authorising grants of sites for churches, schools, &c.

shall be deemed to authorize a sale or grant for such conson in money or otherwise as may be thought fit or for a nominal conson of any pt or pts of the sd hereds either in fee simple or for a term of years absolute or determinable for all or any of the pposes following (that is to say) as a site for a church, chapel, meeting-house, or other place of religious worship, or for a parsonage house or residence for a minister of religion with or without a garden attached thto, or for a burial ground or a schoolhouse or the residence of a school-master or schoolmistress, or a playground belonging to a school, or for a public park, playground, or pleasure-ground, or for a public museum, free library, town hall, or other public building, or for the ppose of a railway, canal, road, drain, water-course, or reservoir, or for the site of water-works, gas-works, or works for the supply of electricity [but so that not more than — acres shall be granted as a site for, &c., here specify any desired restriction, unless the full conson in money is paid for the same].

Geo. III. c. 45, s. 33 ; 6 & 7 Vict. c. 37, s. 22 ; 30 & 31 Vict. c. 133, s. 4 ; 17 Chas. II. c. 3, s. 8 ; 17 Geo. III. c. 53, s. 10 ; 55 Geo. 3, c. 147 ; and 1 & 2 Vict. c. 106. As to conveyances by the lord of a manor for the above purposes, see 51 Geo. III. c. 115, s. 2 ; 17 Geo. III. c. 53, s. 21. As to conveyances by corporations, see 43 Geo. III. c. 108, s. 4 ; 58 Geo. III. c. 45, s. 34, extended by 3 Geo. IV. c. 72, s. 1 ; 6 & 7 Vict. c. 37, s. 22 ; 55 Geo. III. c. 147, s. 5 ; and (to Ecclesiastical Commissioners only) 56 Geo. III. c. 141. As to conveyances on purchases made on the requisition of the Ecclesiastical Commissioners, see 58 Geo. III. c. 45, ss. 36 & 38, as amended by 59 Geo. III. c. 134, ss. 36 to 38 ; 3 Geo. IV. c. 72, s. 8 ; and 1 & 2 Vict. c. 107, s. 9. The above Acts all relate to the Church of England only. As to conveyances for the site of a church, chapel, meeting-house, or other place of divine worship, or the residence of the minister, or a burial ground, extending to Non-conformist bodies, see 36 & 37 Vict. c. 50 (see *Re Marquis of Salisbury*, 2 Ch. D. 29).

As to conveyances for the sites of schools for poor people and the residence of the schoolmaster or mistress, see the School Sites Acts, 4 & 5 Vict. c. 38 ; 7 & 8 Vict. c. 37 ; 12 & 13 Vict. c. 49 ; 14 & 15 Vict. c. 24 ; and the Elementary Education Acts, 1870 and 1873. As to conveyances to trustees of a site for building for the purposes of a society for the promotion of education, arts, literature, or science, see 31 & 32 Vict. c. 44. As to conveyances for a public park (which includes garden), a school-house and play-ground of an elementary school, as defined in the Act, or a museum, see 34 & 35 Vict. c. 13. As to conveyances of recreation and playgrounds, see 22 Vic. c. 27.

LXXXV. AND IT IS HBY AGRD that the provons of the Settled Land Act, 1882, shall be extended so as to authorise the investmt of capital monies arising under these presents or the sd Act [in the pchase of leasehd hereds held for a term of which not less than 40 years shall be unexpired at the time of pchase, or in the pchase for a term not less than 40 years of mines or minerals convenient to be held or worked with the sd hereds and premes, or of any easemt, right, or privilege, convenient to be held thwith] [or in the pchase of freehd or leasehd hereds situate in Ireland], [or in or upon, &c., *extension of interim powers of investment, see p. 435, et seq., forms IV., V., VI.*]

Extension
of powers
of invest-
ment under
Settled
Land Act
(a).

LXXXVI. AND IT IS HBY AGRD that any capital monies arising under these presents or the exercise of the powers of the Settled Land Act, 1882, in relation to the hereds and premes hby settled, may, in addition to the other modes of investmt or application thof authorised by the sd Act or these presents, be applied in or towards paymt of the whole or any pt of the expenses of any improvemt of any nature specified in the afsd Act on any part of the sd hereds and premes, or of any substantial repairs or improvemts of the sd mansion house, or the outbuildings thof, or any farm or other buildings for the time being subjt to the uses or trusts of these presents, or the expenses of the appropriation or laying out of any pt or pts of the sd hereds and premes as sites for and the erection, building, making, and laying out thereon of any churches, chapels, schools, or

Extension
of provi-
sions of
Settled
Land Act
as to im-
provements
(b).

(a) See the Act, s. 21, p. 544, note ; and see also p. 612, form LXX., and the next form.

(b) See the Act, ss. 21 (iii.), 25—29. The improvements specified in s. 25 include a wide range ; but they cannot be paid for out of capital money in the hands of the trustees until the scheme has been approved by the trustees, and a certificate of the Land Commissioners or an engineer or surveyor nominated by the trustees and approved by the commissioners or the Court that the work has been properly done, and as to the amount payable, or an order of the Court directing or authorising the application of the money, has been obtained, s. 26 (1, 2). Where the money is in Court, the Court is empowered to act on a certificate of the commissioners or an engineer or surveyor or otherwise.

Improve-
ments
under
Settled
Land Act.

other buildings, parks, squares, gardens, or other open spaces, roads, streets, paths, sewers, gasworks, gas pipes, or any other works which may tend to the improvement or development of the sd hereds, or any pt or pts thof, as a building este, or of any other works which, in the opinion of the sd trees or tree may be for the permanent improvement or benefit of the sd hereds and premes, and which expenses in the judgment of the sd trees or tree ought fairly and reasonably to be charged on the inheritance of the sd premes, without the necessity in any case of obtaining a certificate from any engineer or surveyor in respect of such improvements or upon the certificate of any engineer or surveyor nominated by the sd trees or tree, whether he shall have been approved or not by the Land Commissioners for England or any Court having jurisdiction under the sd Act.

Power to
tenant for
life to
charge in-
heritance
with ex-
penses of
improve-
ments.

LXXXVII. AND IT IS HBY AGRD that all or any pt of the expenses incurred by any tenant for life under these presents in effecting any improvements of any nature specified in the Settled Land Act, 1882, on any pt of the sd hereds and premes, which shall be certified by any engineer or surveyor appointed by the sd trees or tree to have been properly expended in that behalf, and which in the judgment of the sd trees or tree shall be properly chargeable on the inheritance of the sd premes, shall be so charged together with interest at the rate of 4 per cent. per annum from the time of the expenditure thof.

As to
notices
under
Settled
Land Act
(c).

LXXXVIII. AND IT IS HBY AGRD that it shall not be necessary for any person intending to exercise any powers conferred by the Settled Land Act, 1882, [or these presents] [of leasing for the purpose of occupation, building, improving, or mining, or any other purpose, or making grants in fee for building or improving] in relation to any hereds for the time being subj to the uses or trusts of these presents to give any notice of such intention to the sd trees or tree or to their or his solor; [AND FURTHER that it shall be lawful

for the sd trees or tree at any time by deed to dispense in any case, and either generally or with reference to any parlar class of cases, and either indefinitely or for a limited time, with the necessity for giving any such notices as afsd, but the sd trees or tree may at any time by deed revoke or annul such dispensation to any extent they or he may think fit.]

LXXXIX. AND THIS INDRE ALSO WITNETH that in further psuance of the sd agreemt, and in conson of the sd intd marre, the sd, *husband*, as settlor, *see* p. 429, *note*, with the approbation of the sd, *wife*, doth hby covenant with the sd, *trustees*, their hrs and assigns, that if the sd intd marre shall take place, he the sd, *husband*, and all other necessary pties (if any) will forthwith surrender into the hands of the lord or lords, lady or ladies, of the several manors of which the same are respby holden, according to the custom thof respby, *parcels*, Vol. I., p. 344 ; [AND ALL other (if any) the hereds of copyhd or customary tenure, situate in the respive parishes of, &c., in the county of, &c., to which the sd, *husband*, is now entled for an este of inheritance at law or in equity] *omitting general words and estate clause, see Vol. I., pp. 357, 359, notes*, To THE USE of the sd, *trustees*, their hrs and assigns, to be holden of the lord or lords, lady or ladies of the sd respive manors, according to the customs thof respby, by and under the rents, fines, heriots, suits, and services due and of right accustomed for the same: UPON SUCH TRUSTS and with and subj to such powers and provons as shall correspond with the uses, trusts, powers, and provons hinbefore decld and contd concerning the freehd hereds hby settled, or as near thto as the different tenure of the ppty will permit, but not so as to increase or multiply charges or powers of charging ; AND FURTHER, that after the sd intd marre, and in the meantime and until the same respive copyhd hereds and premes shall have been surrendered psuant to the covenant hinbefore contd, the sd, *husband*, and his hrs will stand possessed thof upon trust for the surrender thof psuant to such covenant, and subj thto upon the trusts and with and subj to the powers and provons

Covenant
to sur-
render
copyholds
upon trusts
correspond-
ing with
uses of free-
holds.

upon with and subjt to which the same would be held if such surrender had been made.

Assign-
ment of
leaseholds
for years
or lives
upon trusts
correspond-
ing with
uses of
freeholds.

XC. AND THIS INDRE ALSO WITNETH that in further psuance of the sd agreemt and in conson of the sd intd marre, the sd, *husband*, as settlor, *see* p. 429, *note*, with the approbation of the sd, *wife*, doth hby assign (*d*) unto the sd, *trustees*, their exs, ads, and assigns, ALL AND SINGULAR, *parcels by reference to leases [or where there are several leases omit the recital of the leases and say : ALL AND SINGULAR the messuages or tenemts, parcels of land and hereds comprd in or expd to be demised by the several indres of lease specified in the schedule hto] [AND ALL other (if any) the hereds held under any lease or leases for years [or a life or lives] situate in the respive parishes of, &c., in the county of, &c., to which the sd, husband, is now entled at law or in equity,] omitting the general words and estate clause, see Vol. I., pp. 357, 359, notes : TO HOLD the same UNTO the sd trees, their exs, ads, and assigns for the several residues remaining unexpired of the respive terms, or "for the several lives or life," or estates for which the same are resply held and subjt to the rents, covenants, and condons reserved by and contd in the sd respive leases, UPON TRUST for the sd, husband, his exs and ads, until the sd intd marre, and after such marre, UPON TRUST that the sd, trustees, or the [survors or] survivor of them, or the exs or ads of such survivor shall, by and out of the rents and profits of the sd respive leasehd premes, pay the rents and perform and observe the covenants by the several lessees, and condons by and in the sd several leases reserved and contd, and subjt thto shall hold the same premes upon such trusts and with and subjt to such powers and provons as shall correspond with the uses, trusts, powers, and provons hinbefore decld and contd concerning the freehd hereds hby settled or as near thto as the nature of the*

(*d*) If the leaseholds are held for lives, say, "grant." The limitation to the trustees, their "exs, ads, and assigns," will be correct in either case.

premes will permit, but not so as to increase or multiply charges or powers of charging, and so that the sd leasehd premes (e) [or any undivided share therein] shall not vest absolutely in any pson hby made tenant in tail [male or in tail] by pchase, unless he [or she] shall attain the age of twenty-one years, but on his [or her] death under that age shall devolve in the same mner as if the same had formed pt of the freehds of inheritance hby settled.

XCI. AND THIS INDRE ALSO WITNETH, that in psuance ^{Trusts of mining plant.} of the sd agreemt, and in conson of the sd intd marre, the sd, *husband*, as settlor, with the approbation of the sd, *wife*, doth hby assign unto the sd, *trustees*, ALL AND SINGULAR the plant, machinery, and chattels in or upon or employed in the working of the mines, collieries, and minerals hby settled, To HOLD the same UNTO the sd, *trustees*, their exs, ads, and assigns, UPON TRUST for the sd, *husband*, until the sd intd marre and afterwards upon the trusts hinafter decl'd; AND IT IS HBY AGRD and decl'd, that the plant, machinery, and chattels hinbefore assigned, or which may hereafter be added to or substituted for the same or any pt thof, as hinafter mentd, shall after the sd marre be held upon such trusts, and with and subj't to such powers and provons as shall correspond with the uses, trusts, powers, and provons hinbefore decl'd and contd concerning the freehd hereds hby settled, or as near thto as the nature of the premes will permit, but not so as to increase or multiply charges or powers of charging, and so that the same premes shall not vest absolutely in any pson hby made tenant in tail [male or in tail] by pchase, unless he [or she] shall attain the age of twenty-one years, but on his or her death under that age, shall devolve in the same mner as if the same had formed pt of the freehds of inheritance hby settled: AND IT IS HBY AGRD that the sd trees or tree shall allow the sd, *husband*, during his life to take and keep possion of the sd plant, machinery,

(e) If any of the leaseholds are held for lives, say, "such of the sd premes as are held under a lease or leases for years."

and chattels hby assigned, and of any plant, machinery, and chattels which may be substituted for or added to the same or any pt thof as hinafter mentd, and to employ the same in the working of the mines, collieries, and minerals for the time being subjt to this settlemt, with power for the sd, *husband*, to alter, vary, remove, sell, and dispose of the sd plant, machinery, and chattels, or any of them in a *bonâ fide* course of managemt, and to receive the produce of such sales, but so that the sd, *husband*, shall be bound to keep the plant, machinery, and chattels for the time being employed in or about the sd mines, collieries, and minerals, in good and complete repair and working order, and so that the same shall be sufficient for the effectual working of the sd mines, collieries, and minerals, and accordingly that all plant, machinery, and chattels substituted or added by the sd, *husband*, for or to the sd plant, machinery, and chattels hbefore assigned, or any pt thof, and employed for the pposes afsd, shall be considered as going along with the sd mines, collieries, and minerals; AND IT IS HBY AGRD that it shall be lawful for, but not incumbent on the sd trees or tree, if in their or his uncontrolled discretion, they or he shall be of opinion that the sd, *husband*, is dealing improperly with the sd plant, machinery, and chattels, to enter into possion of the same, and to allow the sd, *husband*, to use the same subjt to such restrictions only, and in such mner as the sd trees or tree shall think fit; AND IT IS HBY AGRD that it shall be lawful for the sd, *husband*, to sell any of the sd plant, machinery, or chattels, to the lessee or lessées in any mining lease which may be granted of the hereds hby settled or any pt thof, but so that the pchase money for the same shall be received by the sd trees or tree, and be applied as if the same had arisen from a sale of the sd hereds and premes.

Trusts of
chattels as
heirlooms
by refer-
ence to
limitations
of real
estate.

XCH. UPON TRUST to permit the sd — and other articles and effects to devolve and be enjoyed as heirlooms with the freehd hereds hby settled, but so that the same [or any undivided share therein] shall not vest absolutely in any pson hby made tenant in tail [male or in tail] by

pchase, unless he [or she] shall attain the age of twenty-one years, but on his [or her] death under that age such articles and effects shall devolve as if the same had formed pt of the sd freehd hereds; AND IT IS HBY AGRD that an inventory (f) of the sd heirlooms shall forthwith be made, and shall from time to time be revised at the cost of the pson for the time being entled to the use and enjoymt thof, if of full age, and shall be signed by such pson, and also by the sd trees or tree, and the sd heirlooms shall at all times be kept insured against fire to their full value so far as the same may be of an insurable nature, and properly preserved, at the expense of the person for the time being entled to the use and enjoymt thereof; PROVD ALWAYS that the sd trees or tree shall not be bound to see to the insurance, custody, or preservation of the sd heirlooms, or to interfere in any way in relation thto further than to require such inventory to be made and signed as afsd, and shall not be responsible for any omission, neglect, or default on the pt of the pson entled to the use or enjoymt thof or otherwise in relation to the insurance or preservation thof, nevertheless the sd trees or tree shall be at liberty at any time, if they or he shall so think fit, to interfere for the protection of the sd heirlooms; [AND IT IS HBY AGRD that any sale of all or any of the sd heirlooms may be made and that the monies arising from such sale may be invested in the pchase of other chattels under the powers of the Settled Land Act, 1882, without any order of Court (g)].

XCIII. IN TRUST for the sd, *husband*, during his life, and after his decease for the sd, *wife*, in case she shall survive him during her life, and after the decease of the survivor of them, the sd, *husband*, and, *wife*, in trust for the eldest or only son of the sd intd marre, his exs and ads, but in

The same
in per-
sonalty
settle-
ment (a).

(f) If a schedule of the heirlooms is inserted in the deed, the provision for an inventory may be omitted.

(g) See the Act, s. 37 (8).

(a) This form properly belongs to the heading "PERSONAL SETTLEMENTS," but is inserted here as naturally connected with the preceding form.

case such eldest son shall die under the age of twenty-one years and without issue, then in trust for the second son (if any) of the sd intd marre, his exs and ads, with a like gift over to the third and every younger son (if any) of the sd intd marre on the death of his next elder brother under the age of twenty-one years and without issue: And in case there shall be no son of the sd intd marre, or an only or every son shall die under the age of twenty-one years and without issue, then in trust for the eldest or only daughter of the sd intd marre, her exs and ads, but in case such eldest daughter shall die under the age of twenty-one years and without issue, then in trust for the second daughter (if any) of the sd intd marre, her exs and ads, with a like gift over to the third and every younger daughter (if any) of the sd intd marre on the death of her next elder sister under the age of twenty-one years and without issue: And in case there shall be no child of the sd intd marre, or every such child shall die under the age of twenty-one years and without issue, then in trust for the exs and ads of the sd, *husband*, and upon trust to permit the sd — and other articles and effects to be used and enjoyed as heirlooms by the pson for the time being beneficially entled thto under the trusts hinbefore decl'd: *Provisions as to inventory, insurance, and preservation of heirlooms, and protection of trustees, as in last form.*

Proviso that powers of former settlement shall override uses of re-settlement. Variations where additional property is settled (b).

As to over-reaching clause in re-settlement.

XCIV. PROV'D ALWAYS and it is hby agrd that nothing herein contd shall in anywise prejudice or affect the powers annexed to the life este of the sd —, or the powers exerciseable by the respive trees or tree with the consent of the sd — contd in the sd indre of, &c., *the former settlement*, or any of such respive powers, [other than, *here specify any powers which are not to be exercised,*] and that the uses, estes, and

(b) This clause, which keeps alive the powers of leasing and sale, &c., as well as the jointuring and other powers of the original settlement, and enables such powers to be exercised so as to overreach the uses, &c., of the re-settlement in the same manner as if the uses of the latter had been contained in the original settlement (see 3 Dav. Prec. pp. 596, 1062, note), should be in-

powers limited or created by these presents or by any exercise of the powers herein contd shall from time to time [as regards such of the hereds hby settled as immediately before the execution of these presents were subjt to the subsisting uses or trusts of the sd indre of, &c., *the former settlement*, or, "were subjt to the joint power of appointmt by the sd A. and B. contd in the sd indre of, &c., *disentailing assurance*,"] be overreached by the exercise of any of the sd powers contd in the sd indre of, &c., *the former settlement*, in the same mner as if the uses, estes, and powers, limited or created by these presents had been limited or created by the sd indre of, &c., *the former settlement*, and that the hereds to be pchased with any monies arising from any sale [or enfranchisemt], or received for equality of exchange [or partition or the grant of any easemt or other right] under the powers contd in the sd indre of, &c., *the former settlement*, shall, regard being had to the nature and tenure thof, be settled and assured to the uses, upon the trusts, and with and subjt to the powers and provons which shall be subsisting by virtue of the sd indre of, &c., *the former settlement*, [the sd indre of, &c., *the disentailing assurance*,] and these presents, and that all annual rents which shall be reserved upon any exchange, [enfranchisemt, partition, or grant of any easemt or other right,] under the power [several powers] in that behalf contd in the sd indre of, &c., *the former settlement*, shall be so reserved and settled that the same shall be received and enjoyed by the pson or psons who by virtue of the sd indre

serted in a resettlement by father and son, where the father's life estate is preserved or restored, and the powers annexed to it are to be preserved, which may be material in order to overreach charges (such as jointures and portions) subsisting under the former settlement. And although the powers of leasing and sale, &c., under the Settled Land Act, 1882, would be available for this purpose without express provision, it is desirable to keep alive the power of sale in the former settlement in order that the trustees of that settlement may be trustees for the purposes of the Act; otherwise it might be necessary to get trustees appointed by the Court for that purpose, since the trustees of the resettlement would not be trustees under the Act during the subsistence of the life estate under the original settlement.

of, &c., *the former settlement*, [the sd indre of, &c., *the disentailing assurance*,] and these presents would for the time being be entled to the possion or rect of the rents and profits of the hereds comprd in the sd indre of, &c., *the former settlement*, and hby settled.

Appoint-
ment of
trustees
under
Settled
Land Act
(c).

XCV. AND IT IS HBY AGRD that the sd, *trustees*, shall be and they are hby appointed trees of these presents for the pposes of the Settled Land Act, 1882, AND THAT a sole tree for the time being of these presents shall be competent to act for all the pposes of the sd Act, including the rect of capital money and notices thereunder.

Power to
appoint
new trus-
tees in
strict set-
tlement of
realty.
Variations
where there
are several
sets of trus-
tees (d).

XCVI. PROVD ALWAYS, and it is hby agrd that if the sd trees hby constituted, or any of them, or any tree or trees appointed under this present power, or by a court having jurisdiction in that behalf, shall die [or remain out of the United Kingdom for more than twelve calendar months], or desire to be discharged, or refuse or become unfit or incapable to act in the sd trusts, then, and in every such case, it shall be

As to
trustees
under
Settled
Land Act.

(c) See the Act, s. 2 (8), and s. 39 (2), and see the last note. Where the settlement contains an express power of sale exercisable by the trustees or with their consent, they *ipso facto* become the trustees for the purpose of the Act, and no other trustees can be appointed for that purpose. The trustees should also be appointed trustees for the purpose of the minority clause in the Conv. Act, 1881, s. 42, if relied on; see p. 589, form XLII.

As to
trustee
clauses.

(d) The trustees' receipt clause above, p. 488, form LXXIX., is adapted also to a strict settlement. The trustee clauses (namely, the receipt clause, power to appoint new trustees, and indemnity and reimbursement clauses) may and should be omitted in real as well as personal settlements in reliance on the enactments referred to above, p. 489, note (a), and the clause supplemental to the statutory provisions as to the indemnity of the trustees, p. 491, form LXXXIV., substituted. The full clauses in the text, though retained, can in future be very rarely required.

As to ap-
pointing
several sets
of trustees.

There were very commonly, in a settlement of a landed estate, four sets of trustees, namely, 1. Of the pin-money term; 2. Of the jointure term; 3. Of the portions term; and 4. The trustees of the powers, and for the other general purposes of the settlement. But the two first-mentioned sets of trustees were rarely if ever called upon to act, and as it is now wholly unnecessary to limit pin-money and jointure terms (see p. 559, note, p. 568, note (b)), those trustees may in future be dispensed with, and there is not in general any necessity for the portions trustees being distinct from the general trustees, especially as the duties of the latter will in most cases be greatly restricted by

lawful for the surviving or continuing trees or tree for the time being [of the class in which such vacancy or disqualification shall occur] (and for this purpose every refusing or retiring tree shall, if willing to act in the execution of this power, be considered a continuing tree) or for the acting executor, administrator or administrator, of the last surviving or continuing tree [of the same class] to appoint a new tree, or new trees, in the place of the tree or trees so dying [or remaining out of the United Kingdom], or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid: And upon any such appointment the number of trees may be increased or reduced, [but not to less than two]: And upon every such appointment all the trust estate and property, if any (a), [if there are several sets of trustees, add, "then vested in the trees or tree of the class in which such vacancy or disqualification shall have occurred, or in the heirs, executor, or administrator of the last survivor of such trees"] shall, if and so far as the nature of the property and other circumstances may require, be transferred so that the same may be vested in the trees [or tree] (e) for the time being [of the same class]: And every tree so appointed as aforesaid may, as well before as after such transfer of the trust property, (if any,) act or assist in the

the effect of the Settled Land Act, 1882. One set of trustees will, therefore, now in most cases suffice.

Formerly, there was an objection to limiting two terms (e.g. the jointure and portions terms), or a term and an estate of freehold, in immediate succession to the same trustees, but this objection appears to be now removed by the Judicature Act, 1873, 36 & 37 Vict. c. 66, s. 25 (4); but see 4 Dav. Prec. 447.

The power of appointing new trustees in a strict settlement is usually vested As to power of appointing new trustees.
in the surviving or continuing trustees, and not in the tenant for life (as in the case of personalty settlements); and this is undoubtedly now proper having regard to the powers vested in the tenant for life under the Settled Land Act, and the desirability of the trustees being independent of him.

(a) The words, "if any," are proper in the case of a strict settlement where the trustees of the powers take no estate.

(e) If the words, "but not to less than two," which are bracketed above, are inserted, the words, "or tree," here bracketed, will of course be omitted.

execution of the trusts of these presents [*or if several sets of trustees*, "the trusts in respect of which he shall be so appointed a tree"] as fully and effectually in all respects as if he had been hby appointed a tree.

Provisions
for in-
demnity
and reim-
bursement
of trustees
(f).

XCVII. PROVD ALWAYS, and it is hby agrd that the trees for the time being of these presents shall be resply chargeable only for such monies, stocks, funds, and secs, as they shall resply actually receive, notwithstanding their resply signing any rect for the sake of conformity, and shall be answerable and accountable only for their own respive acts, rects, neglects, and defaults, and not for those of each other, nor for any banker, broker, auctioneer, or other pson with whom or into whose hands any trust monies or secs may be deposited or come, nor for dispensing wholly or partially with the investigation or production of the lessor's title on lending money on the secy of [*or pchasing (g)*] leasehds, nor for otherwise accepting less than a marketable title on the pchase, or taking in exchange, [*or on partition or enfranchisemt,*] or on lending money on the secy of any hereds, nor for any defect in title or value of any hereds pchased or taken in exchange, [*or on partition or enfranchisemt*] or on mtge, nor for the insufficiency or deficiency of any investmt, nor for any other loss, unless the same shall happen through their own wilful default resply: AND ALSO that the sd several trees or tree for the time being may reimburse themselves and himself resply, or pay and discharge out of the trust premes all expenses incurred in or about the execution of the trusts or powers of these presents.

(f) See p. 488, note.

(g) See p. 491, note.

PRECEDENTS.

I.

STRICT SETTLEMENT *on marriage of* FREEHOLDS, PREC. I.
COPYHOLDS, *and* LEASEHOLDS, *belonging to* HUSBAND, *with usual clauses, the Limitations not extending beyond the* ISSUE *of the* MARRIAGE. VARIATIONS *where the* DAUGHTERS *take as* TENANTS *in* COMMON, *and for a* BUILDING *or* MINING ESTATE, *and where the* POWERS *of the* SETTLED LAND ACT *are* EXTENDED.

PARTIES, A., husband, 1; B., wife, 2; C. and D., trustees of powers, 3; [E. and F., trustees of portions term, 4] (a).
Recite intended marriage, p. 421; Title of husband as in a Recitals.
conveyance on sale, or as above, p. 541, form I.; AND WHAS Agreement for settlement.
upon the treaty for the sd intd marre, it was agrd that the
sd hereds and premes [and all other, if any, the hereds of
the sd A. of whatsoever tenure, situate, &c.] should be
assured and settled in mner hinafter appearing; NOW THIS Wit-
INDRE WITNETH that in psuance of the sd agreemt, nesseth.
and in conson of the sd intd marre, the sd A., as settlor (b),
with the approbation of the sd B., doth hby grant unto the Grant.
sd C. and D., and their hrs, *Freehold parcels by reference, if convenient, to a schedule*; [And all other (if any) the freehd

(a) If there is only one set of trustees, the part in this bracket will of course be omitted. See as to this p. 631, note.

(b) As to the limited covenant for further assurance implied by these words under the Conv. Act, 1881, s. 7, see p. 429, note. If it is intended that the full covenants for title should be implied as on a sale, the words "as beneficial owner," will be substituted for them.

PREC. I. messuages, lands, tithe rent-charges, and hereds of or belonging to him, the sd A., situate or arising in the parishes of — and —, in the county of — (c)] To HOLD all the same premes UNTO the sd C. and D., and their hrs (d), To THE USE of the sd A. and his hrs until the sd intd marre, and afterwards, *limitation of rent-charge to B. during joint lives of A. and B. by way of pin-money*, p. 558 (e), and *subject thereto to the use of A. for life*, p. 558; *Limitation of jointure rent-charge to B.*, p. 559 (f); *Limitation to E. and F. (g) of a term of 1000 years, to commence from the death of A.*, p. 552; *Limitation to sons* “of the sd A. by the sd B.,” *successively in tail male*, p. 561, [*Limitation to sons* “of the sd A. by the sd B.,” *successively in tail general*, p. 561; *Limitation to daughters*, “of the sd A. by the sd B.,” *as tenants in common in tail general with cross remainders*, p. 562]; *remainder*, To THE USE of the sd A., his hrs and assigns, or, “in fee simple;” [*Trusts of term for raising portions*, p. 569;] *Power to husband to jointure a future wife*, p. 578, and *to charge portions for children of future marriage*, p. 579; *Power to trustees to manage during minorities*, p. 585; *or the addition to statutory power [with the variations where there are limitations to daughters as tenants in common]*, p. 589 (a); *Provision as to notices under Settled Land*

Haben-
dum.

Limita-
tions.

(c) As to the omission of the general words and “all estate” clause in reliance on the Conv. Act, 1881, ss. 6 and 63, see Vol. I., pp. 357, 359, notes.

(d) As to limiting an estate in fee simple or in tail by those words in lieu of the word “hrs,” or “hrs of the body,” by virtue of the Conv. Act, 1881, s. 51, see p. 561, note.

(e) As to the mode of securing the wife’s pin-money having regard to the Married Women’s Property Act, 1882, see p. 558, note.

(f) As to the omission of the powers of distress and entry and term for securing the pin-money and jointure, see p. 557, note.

(g) In a settlement creating several terms for various purposes, they may be all limited to the same trustees (see p. 631, note); or in lieu of several terms one term for all the purposes, preceding all the other limitations, might be created.

As to
powers

(u) The express powers of leasing and sale, &c., are omitted in reliance on the Settled Land Act, 1882, (as to which see the notes, *supra*), according

Act, 1882, p. 622; [Add any of the following clauses which may be appropriate and required with reference to the Settled Land Act: Provision as to extension of powers of Act, p. 616, form LXXIV. (b); Power to grant leases for long terms and reversionary leases, p. 617; Power to make grants in fee for building purposes, p. 597, mutatis mutandis; Extended power to lay out property for building, p. 599, mutatis

PREC L

to the undoubtedly proper course (see p. 546, note). If it is desired to give under express powers, the appropriate powers may be inserted in detail, according Settled Land Act. to the forms in pp. 590 to 615, or by a short clause incorporating the statutory powers, see p. 615, form LXXI.

Although where the limitations are of the ordinary kind the Act will apply and cannot be excluded (see p. 541, note); if it is desired to prevent the first taker from having the powers of the Act, this may be effected by vesting the estate in trustees during his life upon trust for payment to him of an annuity, charged upon the rents and profits only, but of an amount sufficient to exhaust them; and to accumulate the surplus (if any), the accumulations being added to the capital of the estate. If the settlor himself is the first taker the trust for accumulation would be valid to the full extent; but otherwise it might go beyond the period allowed by law (see p. 577, note), in which case it would be void for such excess. Under a trust of this frame the annuitant would not of course have the powers of the Act; and if the accumulation is valid for his whole life, there would be no person during that period answering the definition of a tenant for life within the Act, and the powers of the Act would be suspended altogether during his life; but if the accumulation is liable to fail before his death, the person who would on such failure become entitled to the surplus rents (if any) would it is conceived be tenant for life within s. 58 (vi.) of the Act, and have the statutory powers during the continuance as well as after the expiration of the trust for accumulation. In a settlement in this form the trustees should be directed at the request of the annuitant to demise the mansion house, land in hand, and shooting to him for years determinable on his death at rackrent.

Frame of settlement to exclude statutory powers.

A similar form of settlement might be used in a resettlement by father and son, an annuity in lieu of a life estate being given to the son in remainder after the father's death, and (the son being in that case a settlor), the trust for accumulation during his life would be valid. The same, in resettlement.

In these cases the insertion of express powers of leasing and sale, &c., either in detail or by reference to the Settled Land Act, would be necessary, until the statutory powers arise.

The contrivance of directing a house to be let for a small nominal rent to a person for years determinable on life may be used where a widow is to have dower, a dower house, or an old servant a cottage for life rent free, so as to prevent the donee from being a tenant for life of the house or cottage with the statutory powers; see the Act, s. 58 (1), (iv.).

(b) Or, if more convenient, insert form LXXIII., p. 616, after the clauses extending the Act.

As to house, &c.

PRC. I. *mutandis* ; Provision as to renewable leases, p. 617 ; And as to fines on renewals, p. 618 ; As to mining rents under the Act, p. 618 ; Power to accept leases of easements, p. 601, *mutatis mutandis* ; Provision as to sale, &c., of mansion house, &c., p. 618 ; Power to sell for fee-farm rents, p. 618 ; Power to sell next presentation to a benefice, p. 619 ; Provision as to sale of land subject to a charge under the Lands Improvement Acts, p. 619 ; Extended power to raise money on mortgage, p. 609, *mutatis mutandis* ; Power to exchange for land in Ireland, p. 619 ; Power to sell or grant sites for churches, schools, &c., p. 619 ; Extension of powers of investment under Act, p. 621 ; Extension of provisions of Act as to improvements, p. 621 ; Power to tenant for life to charge inheritance with improvements, p. 622] ; Covenant by A. to surrender copyholds, p. 623 ; And assignment by A. of leaseholds, on trusts corresponding with uses of freeholds, p. 624 ; [for a mining estate, if required, Trusts of mining plant, p. 625] ; Appointment of trustees under Settled Land Act, p. 630 ; Clause supplemental to statutory provisions as to indemnity of trustees, p. 491 (c).

IN WITNESS, &c.

[Schedules.]

II.

PRC. II.

STRICT SETTLEMENT on marriage of **FREEHOLDS** belonging to **HUSBAND**, the **LIMITATIONS** extending to the **SONS** only of the marriage. A very **SHORT** Form without recitals.

Parties.
Wit-
nesseth.

PARTIES, A., husband, 1 ; B., wife, 2 ; C. and D., trustees,
3 : WITNETH that in conson of an intd marre between

(c) As to the power to appoint new trustees, see p. 631, note.

the sd A. and B., the sd A. as settlor, *see* p. 633, *note* (b), PREC. II.
doth hby, with the approbation of the sd B., grant unto the
sd C. and D., *Parcels as in a Conveyance on Sale*: To HOLD
the same UNTO the sd C. and D. and their hrs To THE Limita-
USE of the sd A. and his hrs until the sd intd marre, and tions.
afterwards, *limitation to C. and D. of a term of 1000 years,*
“to commence from the sd intd marre,” p. 552, *with re-*
mainder to the use of A. for life, p. 553, *remainder to sons*
“of the sd A., by the sd B.,” *successively in tail [male],*
p. 561, *remainder,* To THE USE of the sd A. his hrs and
assigns: AND IT IS HBY DECLD that the sd C. and D. and Trusts of
the survor of them, and the exs or ads of such survor or term.
other the trees or tree for the time being of these presents
(hinafter called the sd trees or tree) shall stand possessed of
the sd term of 1000 years upon trust, by and out of the rents
and profits of the sd premes, or by the sale of timber or
minerals, or by mtge of the sd premes or any pt thof for all
or any pt of the sd term, to raise, pay, and apply the annual
and gross sums following, that is to say, FIRST, an annuity For raising
of £——, commencing from the decease of the sd A., payable jointure.
to the sd B., if surviving, during her life, on the usual
quarter days in bar of dower, and so that she shall not have
power during the sd intd coverture to dispose of or charge the
same by way of anticipation; SECONDLY, the sum of £—— Portions
to be raised after the decease of the sd A., or in his lifetime
with his consent in writing, and to be held in trust for all or
any, to the exclusion of the others or other, of the children
or remoter issue of the sd intd marre, other than any son or
sons who before his or their resply attaining the age of
twenty-one years shall become entled whether in possion or
remr to the first este in tail [male] under these presents, if
more than one in such shares and in such mner in all
respects as the sd A. shall by deed, revocable or irre-
vocable, or by will or codicil, appoint, AND IN DEFAULT of
and subjt to any such appointmt in trust for all or any the
children or child of the sd intd marre (other than as afsd)
who being a son or sons attain the age of twenty-one years,

PREC. II. or being a daughter or daughters attain that age or marry, and if more than one in equal shares, AND SUBJT to the trusts hinbefore contd, the sd sum of £——, or so much thof as shall not become vested under the sd trusts, shall sink into the este and not be raised; **THIRDLY**, after the death of the sd A., such annual sum for the maintenance, education, or benefit of each child or grandchild expectantly entled to a portion as the sd trees or tree shall think fit, such annual sum not to exceed interest at the rate of 4 per cent. per annum on such portion, and to be so applied by the sd trees or tree, or to be paid by them or him to the guardians or guardian of such child or grandchild for the ppose afsd, without seeing to the application thof; **FOURTHLY**, such sum not exceeding a moiety of the then expectant presumptive or vested portion of any child or grandchild as the sd A. shall during his life in writing direct, or as the sd trees or tree shall after his decease think fit, to be raised after the decease of the sd A., or in his lifetime if he shall in writing so direct, and to be applied for the advancemt of such child or grandchild in such mner as the sd A., during his life, or the sd trees or tree after his death, shall think fit, but so that, if any such advance shall be made, an equal amount of the sd sum of £——, shall sink into the este and shall not be raised; *Proviso as to surplus rents of term, p. 578, clause in brackets at end of form XXVI.; Minority clause supplemental to statute, p. 589; Provisions as to notices under the Settled Land Act, 1882, p. 622, As to Sale, &c., of the mansion house, &c., under the Act, p. 618, and Extension of powers of investment under Act, p. 621; Appointment of trustees under the Act, p. 630; Clause supplemental to statutory provisions as to indemnity of trustees, p. 491 (d).*

Mainte-
nance.

Advance-
ment.

IN WITNESS, &c.

(d) As to the power to appoint new trustees, see p. 631, note.

III.

RESETTLEMENT of FREEHOLDS, COPYHOLDS, PREC. III.

LEASEHOLDS, and HEIRLOOMS, by a FATHER and his ELDEST SON, on the latter Coming of Age, the LIMITATIONS being extended to COLLATERALS. NAME AND ARMS CLAUSE. SHIFTING CLAUSE, CARRYING OVER THE ESTATE ON SUCCESSION TO ANOTHER ESTATE. VARIATIONS where the POWERS ANNEXED to the FATHER'S LIFE ESTATE are PRESERVED, and where an ADDITIONAL JOINTURE is secured to the FATHER'S WIFE, and ADDITIONAL PORTIONS to his YOUNGER CHILDREN.

PARTIES, A., father, 1; B., son, 2; C. and D., trustees of powers, 3; E. and F., trustees, 4; *Recite, mutatis mutandis, Recitals.* prior settlement, p. 548; *Interim dealings with the property*, p. 551; *State of the family*, p. 551; *Disentailing assurance of freeholds*, p. 549, and of copyholds [or, *Short recital of effect of settlement and disentailing assurance*, p. 550]; *Title to leaseholds*, p. 550; *Incumbrances*, p. 547; AND WHAS, under or by virtue of the sd indre of settlment of, &c., and in the events which have happened, the articles and effects specified in the — schedule hto, now stand settled in trust for the sd A. for his life, with remr to the sd B. absolutely; AND WHAS the sd A. and B. have [after due con- Agreement for settle- sultation and conson of their respive positions and interests ment. in the premes and the circes of the case] agrd to make such settlment as is hinafter contd of the sd respive freehd, copyhd, and leasehd hereds, described in the sd — schedules hto, and all other (if any) the hereds, of whatever tenure, in the respive parishes of, &c., which are now subjt to their joint power of appointmt, and also of the sd psonal chattels and effects; NOW THIS INDRE WITNETH, that in psuance Wit- nesseth. of the sd agreemt, and in conson of the premes, they, the sd A. and B., as settlors (e), in exercise of the power vested in

(e) See p. 633, note. It is conceived that the appointment or conveyance

PREC. III.

Appointment of freeholds (f).

Limitation to joint appointment of father and son.

In default of appointment.

them by the sd indre of, &c., *the disentailing assurance*, and of every other power enabling them or either of them in this behalf, do and each of them doth hby direct and appoint that, *Freehold parcels by reference, if thought proper, to a schedule* [and all other (if any) the hereds of freehd tenure in the respive parishes of —, in the county of —, which are subjt to the joint power of appointmt vested in the sd A. and B. as afsd], shall, but subjt to the charges and incumbrances hinbefore mentd [or, specified in the — schedule hto] so far as the same affect the same premes respively, and to the uses and estes limited or created by the sd indre of settlemt which preceded the este in tail [male] thby limited to the sd B., other than the este thby limited to the sd A. and his assigns for his life, and to the powers annexed to or exerciseable during the continuance of such precedent uses or estes resply other than as afsd, and to the uses and estes limited or created, or to be limited or created in exercise of such powers, henceforth go and remain To SUCH USES, upon such trusts, and with and subjt to such powers and provons, as the sd A. and B. shall from time to time by any deed or deeds, revocable or irrevocable, jointly appoint, and in default of and subjt to any such appointmt, To THE USE that the sd B. and his assigns shall during the joint lives of

by the father and son jointly "as settlors" would bind each to do or concur in any act necessary for confirming the settlement according to the statutory covenant. If the settlors convey "as beneficial owners," the implied covenants would usually be limited as to A. to his life estate, and as to B. to the reversion in fee; as to the mode of effecting this, see Vol. I., pp. 381, 385; see Addenda to 385.

As to form of conveyance.

(f) In this case the joint power of appointment is supposed to override the father's life estate, and to extend to the fee simple in possession; otherwise the conveyance would be by grant as well as appointment, which is sometimes done, even though the power of appointment extends to the fee simple in possession. In that case the appointment will be, "to the uses, &c., hinafter decl'd, &c."; followed by a grant by the father and son, "as settlors," to E. and F. to the uses, &c., after declared; and a declaration that the appointment and grant shall operate and enure "to such uses," &c., as in the text; compare the form of conveyance by appointment and grant to a purchaser, Vol. I., p. 409, note (b).

the sd A. and B. receive, &c., *continue limitation of rent-charge*, PREC. III.
 p. 557, AND SUBJT AND CHARGED as hinbefore is mentd, To To father
 THE USE of the sd A. and his assigns during his life, without for life.
 impeachmt of waste [*where the powers of the old settlement*
are to be kept up, say, "in restoration, and by way of con-
firmation of the life este limited to the sd A. by the sd indre
of settlemt of, &c."], AND FROM AND AFTER the decease of
 the sd A. [To THE USE that if the sd K., *A.'s wife*, shall Additional
 survive the sd A., the sd K. and her assigns shall thenceforth jointure to
 during her life receive the yearly rent-charge of £——, to be father's
 in addition to the yearly rent-charge of £—— the paymt wife.
 whof is secured to her and her assigns by the sd indre of
 settlemt, of, &c., and to be charged upon and issuing out of
 the sd premes hby settled, *continue limitation of jointure*
rent-charge, p. 559; *Limitation to E. and F. of term of* Limita-
 600 years, p. 552;] *Remainder to the use of B. for life* tions.
without impeachment of waste, p. 553; *Remainder to the*
use of his first and other sons successively in tail, p. 561;
Remainder to his first and other daughters successively in
tail male, p. 561; *Remainder to the use of his first and other*
daughters in tail, p. 561, *followed by similar limitations to*
the other living sons of A. and their issue, with remainder,
 To THE USE of every son of the sd A. hereafter to be born
 successively in remr one after another according to their
 respive seniorities in tail, *Remainder to the daughters of A.*
successively in tail male, with like remainders to them in tail,
 p. 561, *Remainders to collaterals, with an ultimate remainder,*
 To THE USE of the sd]B., his hrs and assigns; [*Name and*
arms clause, p. 564]: [AND it is hby agrd and decld that Trust to
 the sd premes are hby limited to the sd E. and F., their raise por-
 exs, ads, and assigns, for the sd term of 1000 years, upon tions.
 trust that the sd E. and F., or the survor of them, or
 the exs or ads of such survor shall, after the death of the
 sd A., or in his lifetime with his consent in writing, raise
 by mtge of the sd premes, or any of them, or by the
 sale of timber or minerals, or by and out of the rents
 and profits of the sd premes, or by all or any of the means
 afsd, the sum of £——, and shall hold the same in trust

PREC. III. for all, or such one or more exclusively of the others or other of the younger children of the sd A., meaning thby the sd, here insert the names of A.'s younger children, who have already attained twenty-one, or being daughters have married, and any other child or children of the sd A. now already or hereafter to be born, who being a son or sons, &c., *continue definition of younger children*, p. 569, *form XXVI.*, at such age or time, &c., *continue trusts of portions term*, p. 569, *the powers throughout being given to A.*: *Provision as to surplus rents of terms*, p. 578; *Power to trustees to manage during minorities*, p. 585, *or the addition to the statutory form*, p. 589; **PROVD ALWAYS**, and it is hby agrd and deold, that it shall be lawful for each [male] pson hby made tenant for life of the sd premes hby settled other than the sd A., *continue power to subsequent tenants for life to charge jointures*, p. 579, saying, "any jointure rent-charge or rent-charges not exceeding the annual sum of £—— for any wife of the sd B., nor exceeding the annual sum of £—— for the wife of any other pson hby made tenant for life, posterior in order of limon to the sd B., to be charged, &c." [*Power to female tenants for life to limit rent-charges to husbands*, p. 579]; *Power to subsequent tenants for life, including B., to charge portions*, p. 582, *mutatis mutandis*, and saying, "of any sum not exceeding in the different events hinafter specified the different sums hinafter mentd, that is to say, for the younger child or children of the sd B., if he shall have but one younger child, the sum of £——, and if but two younger children the sum of £——, and if three or more younger children the sum of £——, and for the younger child or children of any other pson hby made tenant for life posterior in order of limon to the sd B., if he [or she] shall have, &c., as above"; *Proviso that a charge of rent-charge, or portions, shall not take effect unless the person charging the same, or his issue, becomes entitled in possession*, p. 582, adding after, "contd," "by any pson hby made tenant for life posterior in order of limon to the sd B.;" *Proviso, limiting total amount chargeable for rent-charges and portions*, p. 582, *mutatis*

Power to
jointure.

Power to
charge
portions.

PREC. III.

mutandis (a) ; [Shifting clause carrying over estate on succession to another estate, p. 566] ; Provision as to notices under Settled Land Act, p. 622. [Add any of the following clauses which may be appropriate and required with reference to the Settled Land Act : Provision as to extension of powers of Act, p. 616, form LXXIV. (b) ; Power to grant leases for long terms and reversionary leases, p. 617 ; Power to make grants in fee for building purposes, p. 597, *mutatis mutandis* ; Extended power to lay out property for building, p. 599, *mutatis mutandis* ; Provision as to renewable leases, p. 617, and as to fines on renewals, p. 618 ; As to mining rents under the Act, p. 618 ; Power to accept leases of easements, p. 601, *mutatis mutandis* ; Provision as to sale, &c., of mansion-house, &c., p. 618 ; Power to sell for fee farm rents, p. 618 ; Power to sell next presentation to a benefice, p. 619 ; Provision as to sale of land subject to a charge under the Lands Improvements Acts, p. 619 ; Extended power to raise money on mortgage, p. 609, *mutatis mutandis* ; Power to exchange for land in Ireland, p. 619 ; Power to sell or grant sites for churches, schools, &c., p. 619 ; Extension of powers of investment under Act, p. 621 ; Extension of provisions of Act as to improvements, p. 621 ; Power to tenant for life to charge inheritance with improvements, p. 622]. AND THIS INDRE ALSO WITNETH that in further psuance of the sd agreemt, and in conson of the premes, they, the sd A. and B., as settlors, in exercise of the power vested in them by the sd indre of, &c., *the disentailing assurance*, and of every

Further witnesseth.

(a) The powers of leasing and sale, &c., conferred by the Settled Land Act, 1882 (as to which see the notes, *supra*), and which would be applicable to a powers resettlement by father and son, although the father's life estate under the original settlement is preserved, as the definition of a settlement in the Act (s. 2), extends to a settlement arising under two or more instruments taken together, are omitted in reliance on the Act. If it is desired to give express powers the appropriate powers may be inserted in detail, according to the forms in pp. 590 to 615, or by a short clause incorporating the statutory powers, see p. 615, form LXXI.

As to the frame of settlements with reference to the Settled Land Act, see also p. 634 note (a).

(b) Or if more convenient insert Form LXXIII., p. 616, after the clauses extending the Act.

PREC. III. other power enabling them or either of them, in this behalf
 Appoint- do, and each of them doth, hby direct and appoint that,
 ment of *Copyhold parcels, by reference, if thought proper, to a*
 of copyholds. *schedule, [and all other, if any, the hereds of copyhd or cus-*
tomary tenure in the respive parishes of, &c., in the county
of —, which are subjt to the power of joint appointmt
vested in the sd A. and B. as afsd], shall henceforth, But
SUBJT, &c., as in the case of freeholds, mutatis mutandis,
remain and be UPON SUCH TRUSTS, and with and subjt to
such powers and provons as shall correspond with the uses,
trusts, powers, and provons hinbefore limited, decld, and
contd concerning the freehd hereds hby settled, or as near
thto as the different tenure of the ppty will permit, but not
so as to increase or multiply charges or powers of charging :
 Further AND THIS INDRE ALSO WITNETH that in further
 witnesseth. psuance of the sd agreemt, and in conson of the premes, the
 Assign- sd A. and B., as settlors, do, and each of them doth hby,
 ment according to their respive estes and interests, assign unto
 of lease- the sd C. and D., their exs, ads, and assigns, *Leasehold*
 holds. *parcels ; Habendum, Vol. I., p. 363, SUBJT, &c., as in the*
case of freeholds, mutatis mutandis, UPON TRUST that the sd
C. and D., and the survor of them, &c., continue as in
 Further p. 624, form xc. : AND THIS INDRE ALSO WIT-
 witnesseth. NETH that in further psuance, &c., and in conson, &c.,
 the sd A. and B., as settlors, do, and each of them doth
 hby, according to their respive estates and interests assign
 unto the sd C. and D., their exs, ads, and assigns, ALL
 Assign- AND SINGULAR the sd — and other articles and effects
 ment of described in the — schedule hto, To HOLD the same unto
 heirlooms. the sd C. and D., their exs, ads, and assigns, upon trust,
 &c., *continue trusts of chattels as heirlooms, p. 626. [Pro-*
 Provision viso that powers of former settlement shall override uses of
 where resettlement, p. 628]; Appointment of trustees under the
 powers of Settled Land Act, p. 680 ; Clause supplemental to statutory
 old settle- provisions as to indemnity of trustees, p. 491 (c).
 ment are kept up.

IN WITNESS, &c.

[Schedules.]

IV.

SETTLEMENT on Marriage by a TENANT for LIFE PREC. IV.
 in POSSESSION of SETTLED ESTATES, CHARGING
 PIN-MONEY and a JOINTURE for his wife, and
 PORTIONS for younger children (a).

PARTIES, A., husband, 1; B., wife, 2; C. and D., trustees of jointure and portions term, 3. Recite intended marriage, Recitals.
p. 421, Settlement or Will under which A. is tenant for life of estates, and giving powers of jointuring and charging portions, which should be recited fully, and if A. is first tenant for life recite the limitation to him for life, otherwise recite that the estates were thereby limited, "to certain uses under which the sd A. is now tenant for life in possession of the sd estates":
 AND WHAS upon the treaty for the sd intd marre, it was agrd Agreement.
 that the sd A. should make such provon for the sd B. and his younger children by her as is hinafter contd: NOW Witnesseth.
 THIS INDRE WITNETH that in psuance of the sd agreemt, and in conson of the sd intd marre, the sd A., Grant.
 as settlor (*see p. 683 note*) doth hby grant unto the sd C. and D. and their hrs: ALL AND SINGULAR the manors mes-suages, lands, tenemts, and hereds of freehd tenure, which Parcels.
 are now subjt to the subsisting uses of the hinbefore recited indre of settlemt, or, "will," [*or if part only of the estates are to be charged, set out the parcels*]: To HOLD the same Habendum.
 UNTO the sd C. and D. and their hrs during the joint lives of the sd A. and B., To THE USE that in case the sd To use for securing pin money to wife(b)
 intd marre shall take place the sd B. shall during the joint lives of the sd A. and B. receive, &c., continue

(a) This precedent is adapted to the forms in this collection; it will, of course be understood that the details must be adapted to the forms used in the particular settlement.

(b) See p. 558, note (c). As to the statutory remedies, see the same page note (d). This charge of pin money would not of course interfere with A.'s powers of sale, &c., under the Settled Land Act, 1882, see s. 50.

- PREC. IV.** *limitation of rent-charge by way of pin money to B., p. 558, form x., saying, "hereds and premes hby granted :"* And subj^t and charged as afsd To THE USE of the sd A. and his assigns [without impeachmt of waste]: **AND THIS** **INDRE ALSO WITNETH** that in further psuance of the sd agreemt, and in conson of the sd intd marre, and in exercise of the power vested in him for this ppose by the sd indre of settlem^t, or, "will," and of every or any other power in this behalf him enabling, the sd A., as settlor, doth hby limit and appoint To THE USE of the sd B., and her assigns during her life, in case the sd intd marre shall take effect and she shall survive him the sd A., a yearly rent-charge of £—— by way of jointure, to be charged upon and issuing out of all and singular the sd hereds and premes hinbefore charged with the sd yearly rent-charge of £——, to be considered as accruing from day to day, but to be payable quarterly on, &c., *specify days*, or, "on the usual quarter days," without any deduction [except for succession duty, or, *if the power was given by a will*, "legacy duty"], the first of such paymts to be made on such of the sd quarter days as shall happen after the death of the sd A., if the sd B. shall then be living, and so that the sd B. shall not during the sd intd coverture have power to dispose of such rent-charge by anticipation : [AND the sd A. doth hby appoint and declare that the sd B. and her assigns shall have and may exercise and enforce all such powers and remedies for recovering and obtaining paymt of the sd rent-charge, and all costs and expenses incurred in that behalf or in relation thto, by distress and entry upon and rect of the rents and profits of the sd premes [or demising the same to a tree or trees for such ppose] as are conferred by or expd in the 44th Section of the Conveyancing and Law of Property Act, 1881 (c)]: **AND THIS INDRE ALSO WITNETH** that in
- Further witnesseth.**
- Charge of jointure.**
- Declaration as to remedies for recovering jointure.**
- Further witnesseth.**

(c) As to the statutory remedies, see p. 557, note. The remedies which the settlor can give must depend on the terms of the jointuring power ; and if the settlement or will giving the power was before 1882, the remedies should be

further psuance of the sd agreemt, and in conson of the sd PRINC. IV.
intd marre, and in exercise, &c., *as above*, the sd A., as
settlor, doth hby charge all the sd premes hinbefore charged Charge of portions.
with the sd yearly rent-charges of £— and £—,
subjt to such respive rent-charges, and all powers and
remedies and terms of years for obtaining paymt of the
same resply, with the paymt to the younger child or
children of him, the sd A., by the sd B., meaning thby
any child or children who being a son or sons shall
attain the age of twenty-one years, or being a daughter
or daughters attain that age or marry, other than any son or
sons who, before his or their resply attaining the age of
twenty-one years, shall become (*d*) entled [or any daughter or
daughters who before her or their resply attaining that age
or marrying shall become indefeasibly entled], whether in
possession or remr, to the hereds and premes comprd in or
settled by the sd indre of settlemt, *or*, “will,” for the first
este in tail [male or in tail] [or the issue of any such younger
child or children, such issue to be born and take vested
interests within twenty-one years from the death of the sd
A.] of the sum of £— [of, in the different events hinafter
specified, the different sums hinafter mentd, that is to say,
if there shall be but one such younger child the sum of
£—, if there shall be only two such younger children the
sum of £—, and if there shall be three or more such
younger children the sum of £—], such sum to be an
interest vested in such younger child or children, or such
one or more exclusively of the others or other of such

expressly given, either in full, as at pp. 560, 561, or by a short clause incorporating the statutory remedies, as in the text, as there may be a doubt as to the application of the Act in that case, see p. 558, *nota*. If the jointuring power does not enable the appointor to authorise the jointress to limit a term for securing it (according to the statute), but enables the appointor to do so, a clause limiting a term to C. and D., as below, and declaring the trusts of it for this purpose (see p. 568) should be added here; or, if so authorised, one term for securing the jointure and portions may be limited.

(*d*) Where the eldest son of the marriage is not necessarily the first tenant in tail [male], say, “indefeasibly.”

PREG. IV. younger children [or the issue of such child or children], at such age or time, or respive ages or times, if more than one in such shares, and with such future or other trusts for the benefit of any such younger child or children [or issue], upon such condons, with such restrictions, and in such mner, as the sd A. shall, by any deed or deeds, revocable or irrevocable, or by will or codicil, appoint, AND IN DEFAULT of, and subjt to any appointmt under the power lastly hinbefore contd, with the paymt of the sd sum of £—— [£—— or £——, as the case may be], to such younger child or children, and if more than one in equal shares as tenants in common, but not to be raisable or payable during the life of the sd A., without his consent in writing, *PROVD ALWAYS* and the sd A. doth hby further appoint, that, &c., *Hotchpot clause*, p. 570, AND THE sd A. doth hby further appoint that it shall be lawful for the sd C. and D., and the survivor, &c., at any time after the death of the sd A., or in his lifetime, with his consent in writing, to raise any pt or pts, &c., *continue advancement clause*, p. 571: AND ALSO doth hby charge all the sd premes hinbefore charged with the sd portion moneys as afsd, but subjt and without prejudice as afsd, with such annual sum of money as shall be equal to interest at the rate of 4 per cent. per annum on the expectant portion or portions of the sd child or children [or more remote issue], such annual sum to be clear of all deductions except succession, or, "legacy," duty, to commence after the death of the sd A., and to be applied at the discretion of the sd C. and D., or the survivor, &c., for the maintenance and education, or benefit, &c., *continue maintenance clause*, p. 570: AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agreemt, and in conson of the sd intd marre, and in exercise, &c., *as above*, the sd A. as settlor, doth hby appoint all and singular the sd hereds and premes hinbefore charged with the sd [jointure rent-charge and] (e) portion monies as afsd, UNTO AND TO THE USE of the sd C.

Further
witnesseth.

Limitation
of term.

(e) As to the variation in these brackets, see p. 568, note (b).

and D., their exs, ads, and assigns, for the term of 1000 PREC. IV.
 years to commence from the death of the sd A., without im- Trusts of
 peachant of waste [UPON TRUST, &c., *trusts of term to secure* term.
jointure rent-charge, p. 568 (f), *omitting the clause bracketed*
at the end, and also, but] subjt to the sd jointure rent-
 charge, and to the powers, remedies [term of years] (f),
 and trusts subsisting under these presents, or by law for
 securing the paymt thof, UPON TRUST, that the sd C. and D.,
 or the survivor of them, or the exs or ads of such survivor shall
 by mtge of the same premes, or any of them, for all or any pt
 of the same term, or by the sale of timber or minerals, or by
 and out of the rents and profits of the same premes, or by all
 or any of the means afsd, raise the sd sum of £—— [£——
 or £——, as the case may be], or so much thof as shall
 become raisable, with such interest thereon, and such annual
 sums for maintenance, and such sums for advancemt as may
 become raisable as afsd, and any costs and expenses to be
 incurred in or about the raising of the same and the execu-
 tion of the trusts of such term, and subjt to and after paymt
 of such costs and expenses, shall pay and apply the monies
 so raised to or between, or for the maintenance, education,
 or advancemt of the sd child or children [or issue] of the sd
 A. by the sd B., or any of them, or otherwise, in such mner
 as the same resply ought to be paid and applied by virtue of
 the charges and provons in that behalf hinbefore contd, and
 so as to satisfy the same; *Proviso as to payment of surplus*
rents to reversioners, p. 578, *mutatis mutandis*. *Short clause*
as to appointment of new trustees, p. 490.

IN WITNESS, &c.

(f) See note (e) on previous page.

V.

PREC. V.

SETTLEMENT on Marriage by HUSBAND'S FATHER
of FREEHOLDS on HUSBAND and WIFE for Life,
with remainder to their ISSUE, as they may
APPOINT, in DEFAULT EQUALLY, WITHOUT trust
for SALE (a).

<p>Recitals.</p> <p>Agreement for settle- ment.</p> <p>Wit- nesseth.</p> <p>Convey- ance.</p> <p>Haben- dum.</p> <p>Limita- tions.</p>	<p><i>PARTIES, A., husband's father, 1; B., husband, 2; C., wife, 3; D., E., and F., trustees, 4. Recite intended marriage, p. 421; Title of A. to freeholds, p. 541; AND WHAS, upon the treaty for the sd intd marre, it was agrd that the sd A. should convey and assure the sd hereds and premes to the uses and in mner hinafter deold and expd concerning the same: NOW THIS INDRE WITNETH, that in psuance of the sd agreemt, and in conson of the sd intd marre, the sd A. as settlor, see p. 633, note, doth hby grant unto the sd D., E., and F., and their hrs, Parcels as in a Conveyance on Sale, omitting general words and estate clause, see Vol. I., pp. 357, 359, notes: To HOLD the same premes UNTO the sd D., E., and F., and their hrs, To THE USES, upon the trusts, and with and subjt to the powers and provons, hinafter deold and expd of and concerning the same, that is to say, To THE USE of the sd A. and his hrs until the sd intd marre, and afterwards To THE USE of the sd B. and his assigns during his life, without impeachmt of waste, and after the death of the sd B., To THE USE of the sd C. and her assigns during her life without impeachmt of waste, but so, nevertheless, that during the sd intd coverture she shall not have power to dispose of or charge the rents and profits of the sd</i></p>
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(a) As to settlements in the above form, see 3 Dav. Prec. 1234, note; 4 *id.* 557, note. For similar settlements effected by a trust for sale, see above, SETTLEMENTS PERSONAL, Precedents VI., VII., VIII. and IX. Having regard to the Settled Land Act, 1882, it is now comparatively unimportant whether the settlement is by trust for sale or not; but the general frame is simpler when a trust for sale is inserted, especially where personality is settled by the same deed.

premes by way of anticipation (b), and after the decease of the survivor of them, the sd B. and C., *limitation to issue as parents or survivor shall appoint*, p. 562, *remainder to children as tenants in common in fee, with accruer on death under twenty-one, &c.*, p. 563 (c), *with remainder*, To THE USE of the sd A., his hrs and assigns; *Hotchpot clause*, p. 448, *saying*, "the sd hereds and premes;" *Advancement clause*, p. 448, *saying*, "to raise by mtge, with or without power of sale, of all or any pt or pts of the sd hereds and premes, any pt or pts, &c.;" *Addition to hotchpot and advancement clauses*, p. 449, *saying*, "the sd hereds and premes or any pt or pts thof"; AND FURTHER, that no pson advancing money on any such mtge shall be bound to enquire as to the propriety of raising such money or the amount raisable or to see to the application thof: PROVIDE ALWAYS, and it is hby agrd that if any pson, who would but for this present provon for the time being be beneficially entled under any such appointmt as afsd, or in default of appointmt, to the possion or rect of the rents and profits of the sd hereds and premes hby settled, or of any undivided pt or share thof, for any este by pchase, *continue express power to manage during minorities*, p. 585, or *provision supplemental to the statutory power*, p. 589, *with the variations in note (c)*; (d) *Provision as to notices under Settled Land Act*, p. 622; [Add any of the clauses extending the powers of the Settled Land Act, &c., which may be appropriate, pp. 616 to 622, see the reference to these clauses in Precedent I., p. 633]; *Appointment of trustees under Settled Land Act*, p. 630; *Short clause as to indemnity of trustees*, p. 491.

IN WITNESS, &c.

(b) See p. 544, note (f).

(c) If preferred, insert a limitation to all the children as tenants in common in tail general with cross remainders, p. 562, *mutatis mutandis*.

(d) For express powers of leasing and sale, &c., if it is desired to insert them, see pp. 590 to 615; as to their omission, see p. 546, note.

VI.

PREC. VI.

SETTLEMENT of FREEHOLDS in COMPLIANCE with a
CONDITION in a WILL. *A short form(a).*

PARTIES, A., settlor, 1; B. and C., trustees of will, 2.

Recitals. *Recite scisin in fee of A. of estate to be settled; Will of the testator imposing the condition; Death and probate: AND WHAS the sd A. is desirous, for the ppose of complying with the sd condon in the sd recited will, of making such settlemnt as is hby effected of the hereds hinafter mentd: NOW THIS INDRE WITNETH that in psuance of the sd desire, and in conson of the premes, the sd A., as settlor(b), doth hby grant unto the sd B. and C., and their hrs, Parcels, omitting the general words and estate clause, see Vol. I. pp. 357, 359, notes, To HOLD the same premes UNTO the sd B. and C., and their hrs, To THE USES, upon the trusts, and with and subjt to the powers and provons to, upon, with, and subjt to which the same hereds and premes ought to be limited or settled, for the ppose of performing and complying with the condons contd in the sd recited will as afsd [and subjt thto to the use of the sd A., his hrs and assigns]. Appointment of trustees under Settled Land Act, p. 680.*

Witnesseth.

IN WITNESS, &c.

VII.

PREC. VII.

VOLUNTARY SETTLEMENT of FREEHOLDS by a
FATHER on his SON, and the SON'S MALE ISSUE,
the LIMITATIONS being extended as far as the RULES

(a) That a conveyance in a general form is a sufficient compliance with a condition, see *Scarlett v. Lord Abinger*, 34 Beav. 338.

(b) See p. 633, note. It might be more proper in this case that the settlor should convey "as beneficial owner," to imply the full covenants for title.

against PERPETUITIES will allow; the FATHER PREC. VII.
retaining an ANNUITY for his LIFE SECURED by a
Term, and a POWER to CHARGE a gross SUM.
TRUSTS for DISCHARGE of INCUMBRANCES. VARI-
ATIONS where the settlement is REVOCABLE.

PARTIES, A., father, 1; B., "the only son of the sd A.,"
2; C. and D., trustees (a), 3. Recite title of A. to freeholds, Recitals.
p. 541; subject to leases, p. 547, and mortgages, p. 548: AND Family.
WHAS the sd B. has three sons only, namely, K., L., and
M.: AND WHAS the sd A. is desirous of making such settlmt Desire to
of the sd hereds and premes as is hinafter contd [and it is make set-
his intention that such settlmt shall be irrevocable]: NOW Wit-
THIS INDRE WITNETH that in conson of the natural nesseth.
love and affection of the sd A. for his son, the sd B., and
for divers other good causes and consons, he, the sd A., as
settlor, *see* p. 638, *note*, doth hby grant unto the sd C.
and D., and their hrs, *Parcels, as in a Conveyance on Sale*:
To HOLD the same premes UNTO the sd C. and D., and their Haben-
hrs, SUBJT to the charges and incumbrances hinbefore mentd, dum.
[or, specified in the schedule hto], so far as the same affect
the same premes resply, and to the leases and tenancies
afsd. To THE USES, upon the trusts, and with and subjt to Limita-
the powers and provons hinafter decld and expd concerning tions.
the same (that is to say), *Limitation to C. and D. for a term*
of 1000 years, "to commence from the date of these
presents," p. 552, *remainder to B. for life*, p. 553, *remainder*,
To THE USE of the sd K., L., and M., in succession, one
after the other, according to seniority, during their respive
lives, with a limitation by way of remr, immediately after the
decease of each of them the sd K., L., and M., To THE USE
of his first and every other son, &c., *in tail male*, p. 561;
AND AFTER the decease of all of them the sd K., L., and
M., and in default of such issue of all of them, To THE USE
of every son of the sd B. hereafter to be born, *in tail male*,

(a) It will be observed that in this precedent one term is used for several purposes.

PARC. VII.

Trusts of
term to
secure
annuity.

p. 561, *remainder*, To THE USE of the sd A., his hrs and assigns : AND IT IS HBY AGRD AND DECLD that the sd premes are hby limited to the use of the sd C. and D., their exs, ads, and assigns, for the sd term of 1000 years, upon trust, *to raise annuity of £—*, “commencing from the date of these presents,” payable to A., p. 568, *mutatis mutandis* : AND UPON FURTHER TRUST, &c., *trust for accumulation*, p. 577 (b) : AND UPON FURTHER TRUST, that if there shall be any younger child or children of the sd B., meaning, &c., *continue trusts of portions term*, p. 569 (c) ; *Power to male tenants for life to jointure*, p. 579, *omitting the words*, “other than the sd — ;” *Power to subsequent tenants for life to charge portions*, p. 582 ; *Proviso as to events in which rent-charges or portions are to take effect*, p. 582 ; *Proviso limiting total amount chargeable*, p. 583 ; *Power to A. to charge a gross sum*, “to be raised forthwith, or at any time, in priority to all other principal or annual sums charged or chargeable under these presents,” p. 584 ; *Power to limit a term for securing sum charged*, p. 585 ; *Power to manage during minorities*, p. 585 ; *or clause supplemental to the statute*, p. 589 ; (d) *Provision as to notices under Settled Land Act*, p. 622 ; [Add any of the clauses extending powers of Settled Land Act, &c., which may be appropriate, pp. 616 to 622, see the reference to these clauses in Precedent I., p. 633 ;] *Appointment of trustees under Settled Land Act*, p. 630 ; *Short clause as to indemnity of trustees*, p. 491. [Power of revocation, p. 492].

IN WITNESS, &c.

As to trusts
of policies
for dis-
charging
incum-
brances.

(b) If provision for discharging incumbrances is made by policies on the lives of A. and B., a recital of the title to, and if necessary an assignment of, the policies will be inserted, and trusts declared of the policy moneys, and trusts of term for securing payment of premiums, p. 573, will be substituted for the trust for accumulation.

(c) In a settlement of this nature it may be advisable to omit the trust for raising portions, and to give a power to B. to charge portions. This can be done by omitting the words, “other than the sd —,” in the power to charge portions.

(d) For forms of express powers of leasing and sale, &c., if it is desired to insert them, see pp. 590 to 615 ; as to the omission of these powers, see p. 546, note.

WILLS. (a)

CLAUSES.

INTRODUCTORY.

I. I, *testator*, late of (b) —, and now of —, hby Commence-
ment. revoke all former wills, codicils, and testamentary instru-
ments (c) made by me, and declare this to be my last will.

II. THIS is the last and only will of me, *testator*, of —. The same.
Short form.

III. I, *testator*, of —, declare this to be my last will, Concur-
rent will. which I make for the ppose only of disposing of the este and
ppty hinafter mentd, and to the intent that the same shall
take effect concurrently with and independently of another
will of even date herewith, relating to my ppty situate at,
&c., and not in any way affecting the ppty hby disposed of.

IV. I, *testator*, of —, hby declare this to be a [second] Codicil.
codicil to my will, which bears date the — day of —.

V. I wish to be buried wherever I may happen to die, [or, Direction
as to
burial (d). in the family vault at —,] and that my funeral shall be as
simple and inexpensive as possible.

(a) See Davidson, Prec., Vol. IV. ; Elph. Introd. Conv. 423. The recent
legislation affecting settlements, for a short reference to which see p. 421,
note, and for the details of which see the notes to "SETTLEMENTS," for the
most part affects wills also.

(b) It may save trouble in establishing the testator's identity if any past, as
well as present address, by which he may be registered in the books of the
Bank of England, or any Company, &c., as the holder of any stocks or shares,
&c., is given.

(c) See *re Savage*, L. R. 2 P. & D. 78. *Sotheran v Denny*, 20 Ch D 99 (see page

(d) It may be better not to insert directions as to burial in the will, lest it
should not be opened till after the funeral.

114
Addenda &
Codicils

Confirmation
of
marriage
settle-
ment (e).

VI. I confirm the settlemt [several settlemts] executed on my marre [with my present wife], and I declare that the provons hby made for my wife and children [and other issue] are intd to be in addition to and not in satisfon of those made or covenanted to be made for them resply in and by such settlemt [respive settlemts].

SPECIFIC LEGACIES.

Stock.

I. I BEQUEATH to A., of —, the sum of £—— Consolidated £3 per cent. Annuities [part of a larger sum of like Annuities] now standing in my name.

Another
form.

II. I BEQUEATH to A., of —, all the stock in the public funds of the United Kingdom of which I may be possessed at my decease, *or*, “all my shares in the — Company.”

The same,
in trust.

III. I BEQUEATH to, *trustees*, their exs, ads, and assigns, the sum of £—— Reduced £3 per cent. Annuities, *or*, “New £3 per cent. Annuities,” now standing in my name, upon the trusts hinafter deold concerning the same.

Ready
money (f).

IV. I BEQUEATH to — all the ready money which at my decease may be in my house [or standing to the credit of my current account at my bankers].

Bond debt.

V. I BEQUEATH to — all the principal monies and interest which shall be owing to me at my death on the bond of —, and also the sd bond and all benefit thof (g).

Mortgage
debt.

VI. I BEQUEATH to — all the principal monies and interest which shall be due or owing or accruing due to me at the time of my death on a mtge of the — este, *or*, “of hereds situate at —, in the parish of —, in the county of

(e) As to this clause, see 4 Dav. Prec. p. 66, note.

(f) As to gifts of ready money, see 4 Dav. Prec. 99, note; 1 Jarm. Wills, 769, note.

(g) It may be convenient to appoint the legatee special executor as to the debt. See below, APPOINTMENT OF EXECUTORS; 4 Dav. Prec., p. 120, note.

—," or, "of ppty belonging to —," or as the case may be, [if the description of the mortgage deed is known, say, "under an indre, dated, &c.,"] (a), and I devise and bequeath all the hereds of whatever tenure [and other ppty] comprd in such mtge unto and to the use of the sd —, his hrs, exs, ads, and assigns, according to the nature thof resply, subjt to the equity of redemption subsisting therein (b).

VII. I RELEASE and forgive to —, or to his representa- Release of debt to debtor (c).
tives if he should die in my lifetime, the sum of £— now due to me from him on his bond, [on mtge of ppty at, &c.,] or so much thof as may remain owing to me at my death, and all interest for the same, and I direct that the sd bond shall be cancelled and given up to him or them, [or, that the hereds and ppty comprd in such mtge shall be released and reconveyed accordingly, discharged from the sd mtge debt and interest, and all claims in respect thereof].

VIII. I RELEASE and forgive to —, or to his represen- Release of all debts owing from legatee. Variations where the interest only is released and time given for payment of principal.
tatives if he should die in my lifetime [all and every principal sums or sum and interest whatsoever,] [all interest owing to me at my decease, on any principal sums or sum], which may be owing from him or them to me at my decease on the secy of any bond or bonds, bill or bills, note or notes, or otherwise howsoever, [and I direct that every such bond, bill, note, or other secy shall be released and given up to the sd

(a) See note (g) on previous page.

(b) By the Conv. Act, 1881, s. 30, the legal estate in mortgage estates of As to inheritance devolves on the personal representative of the deceased mortgagee, assent by executors to gift of mortgage "notwithstanding any testamentary disposition," "as if the same were a chattel real." See Vol. I., p. 421, note. The effect seems to be that the personal representative may assent to a specific devise of the mortgage debt, together with the mortgaged estate whether freehold, copyhold, or leasehold, so as to give effect to it without any conveyance.

(c) The forgiveness of a debt is in law a legacy, and liable to ademption, As to for- and to lapse by the death of the legatee in the testator's lifetime (unless this is expressly provided for, as in the text), and is chargeable with legacy duty. debt. If the debt has been forgiven before the date of the will, this should, of course, be declared, as in form IX., so as to avoid duty. For a provision where a legacy is given in trust for the debtor and his family, see *infra*, and 4 Dav. Prec., pp 108, 376.

— I, the testator, do hereby direct that he or they shall pay to the executor in payment of such principal sums of money as may be required not exceeding £—— each, and interest thereon at 5 per cent.

I, the testator, do hereby direct that all debts at any time or times advanced to me by any person or persons at or on account of —— were introduced by me into my estate since being introduced by me, and that nothing is to be paid to the executor at —— in respect of any such advances or payments, and no claim shall or can be made against the executor in respect thereof.

I, the testator, do hereby direct that all my watches, jewellery, and all other personal ornaments

shall be given to my surviving spouse to my servant —— shall be in my service at the time of my death.

I, the testator, do hereby direct that all my wines, liquors, provisions, and consumable stores

shall be given to —— docket of my wines, to be sold by the executor.

I, the testator, do hereby direct that my carriages, horses, harness, saddles, and other furniture, or any one of my carriages, and any pair of my horses with harness for the same, to be sold by the executor.

I, the testator, do hereby direct that all my account books, letters, papers, manuscripts, and manuscripts, except deeds and documents of title and receipts for money.

I, the testator, do hereby request —— to examine all my letters, letter-books and papers, and to destroy such of the same as he shall consider ought not to be preserved, and I declare that it shall be in his entire discretion whether to show or disclose the same to the executor or to any other person (c).

(c) Consumable stores should of course from their nature be given absolutely, and a gift of them for life would be an absolute gift: see 4 Dev. 290; 12 Jur. 100; 10 Jur. 580.

(d) The law would not, of course, prevent the executors from examining the papers if they think fit. If it is wished to prevent this, the papers should be sealed up and the legatee made special executor as to them. See below, EXECUTORS OF ESTATES.

XVII. I BEQUEATH to — all my watches, jewels, trinkets, Furniture and personal ornaments, and wearing apparel, and all my furniture, plate, plated goods, linen, glass, china, books, manuscripts, effects, &c. Full form. pictures, prints, statuary, musical instruments, articles of vertu, and all other articles of personal, domestic, or household use or ornament, [other than fixtures (*f*)], and I also bequeath to the sd — all my] wines, liquors and consumable stores and provions, and all my horses, carriages, harness, saddlery, and stable furniture, and all my plants and garden tools and implemts.

XVIII. I BEQUEATH to — all articles of personal or domestic or household use or ornament belonging to me. The same. Short form (*g*).

XIX. I BEQUEATH to — all the furniture, &c., as in form Effects in house. Full form. XVII., which at the time of my death shall be in, about, or belonging to or appropriated or ordered for my house at — or any other house in which I may reside [which may be my principal place of residence] at my decease, or the outbuildings, stables, coach-houses, gardens, or pleasure-grounds thereof.

XX. I BEQUEATH to — all the effects, other than money or securities for money, which shall at the time of my death be in or about or belonging to or appropriated for my dwelling-house. The same. Short form.

XXI. I BEQUEATH to my wife — such articles of furniture, plate, or other effects of domestic or household use or ornament as she shall within — calendar months from my death select, to a value not exceeding £——, such value in case of dispute to be determined by my executors in such manner as they shall think proper. Bequest to wife of furniture, &c., to be selected by her.

XXII. I AUTHORISE my executors to sell to my wife — at a valuation to be made in such manner as they shall think fit, all or any part of my furniture, plate, and other household effects, and to allow the purchase-money to be paid by instalments or otherwise, with interest at such rate and in such Special power to sell furniture to wife at valuation.

(*f*) See *Finney v. Grice*, 10 Ch. D. 13.

(*g*) As to what passes by this, see 1 Jarm. Wills, 757.

manner as they shall think fit, with or without taking seey, and I declare that the pchase-money for the same shall form pt of my residuary este.

Furniture
or other
effects to
wife for
life or
widowhood
without
trustees.
No inven-
tory.

XXIII. I BEQUEATH the use and enjoymt of all my furniture, &c., or as the case may be, to my wife — during her life [widowhood], she keeping the same properly insured against fire, and I declare that after her death, [or re-marre], the same shall fall into my residuary este; And I declare that it shall not be necessary to take an inventory thof, and that my exs shall not be concerned to see to the insurance thof, or be liable for any loss or damage that may happen thto from any cause whatsoever.

Furniture
or other
effects to
wife for
life or
widow-
hood.

Inventory
to be
made.

XXIV. I BEQUEATH all, &c., to, trustees, their exs and ads, in trust to permit my wife — to have the use and enjoymt thof during her life [widowhood], she keeping the same properly insured against fire and in good repair and preservation, reasble wear and tear excepted; and after her death [or re-marre], upon trust for —; And I direct that an inventory of the same effects and premes shall be made in duplicate as soon as may be after my death by my trees (a) at the expense of my este, and that one copy thof shall be signed by my trees and kept by my sd wife, and one copy signed by my sd wife and retained by my trees: Provd always, and I declare that my trees shall not be concerned during the lifetime [widowhood] of my sd wife to see to the insurance or preservation of the sd effects and premes, or any of them, or be liable for any loss or damage that may happen thto from any cause whatsoever: [Provd always, and I declare that it shall be lawful for my sd wife at any time, with the consent in writing of my trees, to sell any pt of the sd furniture and effects, and to apply the proceeds in the pchase of other effects of a like nature to be held upon the same trusts].

Power of
sale.

(a) It is assumed throughout these forms that "trees" is defined as including a sole trustee. If this is not done, the expression, "trees or tree," should be used.

XXV. I BEQUEATH all, &c., to, *trustees*, upon trust to Furniture, &c., to permit, *legatee*, to possess, use, and enjoy the same during her life, and after her death upon trust for such person or woman, excluding persons and for such purposes as the sd, *legatee*, shall, while her husband, and his power of alienation during his coverture (b). discover by deed or writing, or whether covert or discover by will or codicil, appoint, and in default of and subject to any such appointment, if the sd, *legatee*, shall die discover, in trust for the sd, *legatee*, her executors, administrators, and assigns, but if she shall die covert in trust for such person or persons as would have become entitled thereto under the statutes for the distribution of the personal estates of intestates at the time of her death if her husband had died immediately before her, and she had died possessed thereof and intestate, such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes: Provided always and I declare that the sd, *legatee*, shall not during [her present or any future] coverture, have power to alienate or dispose of her life or reversionary interest in the sd furniture and effects, or any of them: *Provisions as to insurance and inventory, and protection of trustees from liability, and power of sale, as in last form, mutatis mutandis.*

XXVI. I BEQUEATH all my furniture, plate, plated articles, Furniture, &c., in books, pictures, prints, and other household and domestic effects to, *trustees*, their executors and administrators, upon trust (so long as in trust for children to be divided among them on their all attaining twenty-one, or marrying. any child of mine shall be under the age of twenty-one years and unmarried) to permit the same, or any of them, to be used and enjoyed by my children, or any of them, or by any person or persons for their, his, or her benefit, under such restrictions and in such manner as my trustees may think fit, and to cause such parts (if any) of the sd furniture and effects as may not be so used to be preserved and taken care of at the expense of my general estate, and upon further trust, so soon as all my children shall have attained the age of twenty-one

(b) This somewhat elaborate trust is intended to give the legatee full power of disposition while discover, but to restrict her power during coverture. As to this restriction, and as to the form and effect of gifts to married women since the Married Women's Property Act, 1882, see p. 439, note.

years or married or died under that age, to divide such furniture and effects among such of my children as shall have attained the age of twenty-one years, or married, or their exs, ads, or assigns, as nearly as may be in equal shares, and with an absolute discretion as to the mode of effecting such division, which shall not be questioned on the ground of any alleged inequality or otherwise : **PROVD ALWAYS** and I declare, that it shall be lawful for my trees, either immediately after my death or at any subsequent time or times, with the consent of such of my children (if any) as shall for the time being have attained the age of twenty-one years, or their respive exs or ads, to sell any pt or pts of the sd furniture and effects, which may not appear likely to be of any special value to my children, or which it may be inconvenient or expensive to preserve for them, in which case the proceeds thof shall form pt of my residuary personal este ; **PROVD ALSO**, that it shall be lawful for my trees, at any time before the afsd period of division, to make over any portion of such furniture and effects to any child of mine who shall have attained the age of twenty-one years or married, as pt of his or her share or expectant share therein ; **AND I DIRECT** my trees to have inventories prepared of such pts of the sd furniture and effects as they may deliver to my children, or any of them, or to any pson or psons for their respive use before the final division thof, (except such of the same effects as, from their trifling value or perishable nature or for any other reason, it may be considered unnecessary to include in such inventories), and to cause such inventories to be signed by the psons to whom such furniture and effects shall be delivered : **And I give** my trees an absolute discretion as to the insurance of the sd furniture and premes, **And I declare** that after causing such inventories as afsd to be made, my trees shall not be concerned to see to the custody or preservation of the sd furniture and premes, or be liable for any loss or damage happening thto.

not be bound to see to the insurance, custody, or preservation of the sd furniture and other effects comprd in the bequest hinbefore contd, or to interfere in any way in relation thto, further than to require such inventory to be made and signed as afsd, and shall not be responsible for any omission, neglect, or default on the pt of the pson or psons entled to the use or enjoymt thof, or otherwise in relation thto, or for any loss thof, or damage thto, nevertheless my trees shall be at liberty at any time, if they shall think fit, to interfere for the protection of the sd furniture and premes.

for indemnity of trustees of settled furniture.

xxviii. PROVD ALWAYS and I request that the sd — will give and dispose of any articles which may be mentd in any memorandum signed by me and deposited with this my will, or left among my papers at my death, according to the directions therein contd, but such memorandum shall not be deemed to have any testamentary character, and the above expression of my wishes as to the disposal of the sd articles shall not create any trust or legal obligation.

Disposal of specific articles by reference to a separate paper (c).

BEQUESTS OF LEASEHOLDS, &c.

i. I BEQUEATH my leasehd messuage, with the gardens, pleasure-grounds and lands held thwith, situate at — [or, my leasehd messuage, with the outbuildings and stabling belonging thto, situate and being No. —, in — Street], in the parish of —, in the county of —, with the appurts thof (d), unto A., of, &c., his exs, ads, and assigns,

Specific bequest of leaseholds.

(c) As to the incorporation of separate papers in the will, see 4 Dav. Prec. 303, xliii., 1 Jarm. Wills, 89 *et seq.*

(d) If the testator has other property adjoining, say, "with the rights, easemts, and appurts thto belonging, or reputed to belong, or thwith held or enjoyed." See *Polden v. Bastard*, L. R. 1 Q. B. 156, and the cases there cited. This is not affected by the Conv.

for all the residue which shall be unexpired at my decease of the term for which the same premes are holden "subjt to the rent reserved by, and the covenants and condons contd in the lease under which the sd premes are holden," or, "the sd —, his exs, ads, and assigns, paying the rent reserved by, and performing and observing at his and their own expense, the covenants and condons contd in the lease under which the sd premes are holden, and keeping my general este indemnified in respect thof."

The same
to trustees.

II. I BEQUEATH all that, &c., *as in last form*, unto, *trustees*, their exs, ads, and assigns, for all the residue, &c., and subjt to the rent, &c., *as in last form*, upon trust that my trees shall by and out of the rents and profits thof pay the rent reserved by the sd lease, and all other necessary outgoings in respect thof, and the expenses of [keeping the same insured and in good repair and otherwise] performing the covenants of the sd lease, and upon further trust, &c.

Bequest of
leasehold
house with
furniture,
&c.

III. I BEQUEATH unto A., of, &c., his exs, ads, and assigns absolutely, all that my leasehd messuage, &c., wherein I now reside, for all my term and interest therein, togr with all my furniture, fixtures, and household effects, in, about, or belonging to the same.

Bequest
(without
trustees) of
leasehold
house and
furniture,
&c., to wife
for life or
widow-
hood, with
remainder
over (e).

IV. I BEQUEATH unto my wife —, during her life [widowhood], my leasehd messuage, &c., if my term therein shall so long last, togr with all the furniture, fixtures, &c., *as in last form*, she, my sd wife, paying the rent, rates, taxes, and outgoings for the time being payable in respect of the sd messuage and premes, and keeping the same properly insured against fire and in good repair, and duly observing and performing all the lessee's covenants and condons contd

Act, 1881, s. 6, implying the usual general words in conveyances, as a will is not a "conveyance" within the Act, see s. 2 (v.).

Variation
for
trustees.

(e) For a bequest *with* trustees, say, "I bequeath to, *trustees*, their exs, ads, and assigns, my leasehd messuage, &c., togr with all the furniture, &c., in trust for my sd wife during her life [widowhood], she paying, &c., and say, "my trees," instead of

in the lease under which the sd leasehd premes are holden, and also keeping the sd furniture and other effects insured and in a proper state of preservation; and it is my desire that my exs or exor shall see to the insurance of the sd mesuage, furniture and effects, but without being in any way responsible for any omission so to do, or for any loss or damage happening thto from any cause whatsoever; and from and after the decease [or second marre] of my sd wife, I bequeath the sd leasehd premes for all the then unexpired term therein, and the sd furniture and effects unto my son —, his exs, ads, and assigns absolutely.

V. I BEQUEATH unto A., of &c., during his life if my term therein shall so long last, an improved leasehd ground-rent, issuing out of certain tenemts and hereds, situate in, &c., which I pchased of —; and I direct that, after the decease of the sd A., the same leasehd premes shall sink into, and become pt of my general residuary este, and pass under the bequest thof hinafter contd.

Bequest (without trustees) of leasehold ground-rent for life.

VI. I BEQUEATH all, &c., to, *trustees*, their exs, ads, and assigns, upon trust that my trees shall receive the rents and profits thof, and after paying thereout the rent reserved by the lease under which the same premes are held, and all other necessary outgoings, if any, and the expense of [keeping the same insured against loss or damage by fire and in good repair, and otherwise] performing the covenants of the sd lease, shall pay the surplus or net rents and profits thof to, *legatee*, the wife of —, or shall permit the sd, *legatee*, personally to occupy and manage the sd premes, but so that, if and so long as the sd, *legatee*, shall personally occupy and manage the sd premes, she shall [keep the same insured and

Leaseholds to trustees for married woman for life, remainder as she may appoint, in default, for her or her next of kin, excluding husband, and restraining anticipation. Full form (f).

“my exs, or exor,” and at the end of the clause say, “I declare that the sd leasehd premes, furniture, and effects, shall be held in trust for my son, &c.” That a bequest of chattels real or personal with a gift over can be made without trustees, the gift over operating as an executory bequest, see *Fearne*, C. R., 10th ed. p. 401. But it is usually better to interpose trustees.

(f) See p. 439, note.

in such good repair as aforesaid, and otherwise] perform the covenants of the said lease, and pay all other necessary outgoings, if any, and so that my trees shall not incur any liability by reason of her neglecting so to do; And after the death of the said, *legatee*, my trees shall stand possessed of the same leasehold premises in trust for such person or persons, &c., as *legatee* may appoint, in default for her or her next of kin, and clause restraining alienation, as at p. 661, form xxv.

Leaseholds to married woman absolutely, with a restraint on anticipation (g).

Bequest of leasehold farm with farming stock, &c.

VII. I BEQUEATH all, &c., to, *legatee*, the wife of —, absolutely, [but so that during [her present or any future] coverture she shall not have power to deprive herself of the benefit thereof by any sale, mortgage, or other disposition by way of anticipation].

VIII. I BEQUEATH to —, his exs and ads, my farm, called —, and the farm-house, farm buildings, and land belonging thereto, as the same are now held by me, under a lease from —, together with the live and dead stock, growing and severed crops and produce, furniture, household goods and effects, and consumable stores and provisions, which shall at the time of my death be in, upon, about, or belonging to the said farm, or the said farm-house, buildings, and premises.

BEQUESTS OF BUSINESS.

Bequest of business.

I. I BEQUEATH to — the goodwill of my trade or business of —, and the stock in trade, machinery, plant, and effects employed therein or belonging thereto, [including the lease of the messuage or tenement, shop, manufactory, and

(g) See p. 439, note. There is no objection to restraining anticipation, although the bequest is absolute, nor (having regard to the Married Women's Property Act, 1882) to making the bequest direct to the married woman without trustees.

buildings, situate at, &c., in which the sd business is carried on, or used for the pposes thof,] and the benefit of all contracts subsisting in respect of the sd business, and all book debts, and moneys due to me in respect thof, or standing to the credit of my business account at my bankers at the time of my decease, the sd — discharging and indemnifying my general este from all debts and liabilities due or subsisting in respect of the sd business at my decease, and, if required by my exs, entering into a bond or covenant at the expense of my general estate in that behalf, [*add, if desired, appointment of legatee special executor in respect of,* “the sd business and premes hinbefore bequeathed to him,” *see below,* “APPOINTMENT OF EXECUTORS.”]

II. IN EXERCISE of a power contd in the articles of ptnship of the firm of —, in which I am a ptner, dated, &c., or any other power which may at my decease enable me in this behalf, I hby introduce my son — as a ptner into the sd firm as from my decease during the remainder of the term of the sd ptnship, subjt to the provons of the sd articles of ptnship, or any other agreemt of ptnship which may be subsisting at my decease; And I hby bequeath unto my sd son my share in the capital, stock in trade, assets, goodwill, and profits of the sd firm, he indemnifying my general este from all debts and liabilities of the sd firm, [and paying to my exs for the general pposes of this my will my share of the profits of the sd ptnship business and interest on my capital therein up to the day of my death, as and when the same shall be received by him]: [*Appointment of son as special executor in respect of,* “the share and premes hinbefore bequeathed to him,” *see below,* “APPOINTMENT OF EXECUTORS.”]

Bequest of share in partnership to a son under a power in the articles of partnership.

III. I AUTHORISE my trees (a) to concur in winding up the

Power to wind up

(a) Some of the powers under this head may be more properly given to the executors. In case of doubt this may be provided for by inserting the clause at the end of the form. Both executors and trustees are now invested with large powers of settling accounts and compromising, &c., by the Conv. Act, 1881, s. 37, which might suffice for ordinary cases; but the clause in the text is much more comprehensive.

partner-
ship busi-
ness.

business of —, now carried on by the firm of —, in which I am a ptner, or any business in which I may be a ptner at the time of my death, and for that ppose to make, or concur in making, arrangemts and compromises with debtors or creditors or psons under contract with the firm, and also to dispose of my share in any such business by valuation, or otherwise, and generally on such terms as they shall think fit, with power to postpone such winding up or disposition [until one or more of my sons shall attain the age of twenty-one years, or] during such period as they shall think proper, and with full power to settle any accounts, and to accept any statemts of account, whether with or without the production of any vouchers or other evidence, and to accept, pay, or allow any agrd or estimated sum in satisfon of all or any of my rights or liabilities, and to accept, or concur in accepting, paymt for my share, or for the whole of any such business, as the case may be, by such instalmts, upon such terms, and in such mner, as they shall think fit; And with power to allow the whole or any pt of my share in the capital of any such business to remain as a loan to the pson or psons for the time being carrying on the same business, [and to lend any further sum or sums of money out of my este, not exceeding in the whole £—, to them or him,] for such time, under such condons, upon such secy whether psonal or otherwise, and at such rate of interest whether fixed or varying with the profits, as my trees shall think fit, without being responsible for any loss which may be occasioned thereby; And generally to act in relation to any such business with the same powers and discretions as if they were absolute owners thof, without liability for any loss which may be occasioned thby: AND I DECLARE that all or any of the powers hby given to my trees in relation to the sd business may, in case and so far as circes may require, be exercised by my exs, and all such powers may be exercised, notwithstanding that any of my trees or exs may be interested as a ptner or ptners in the sd business, or may be beneficially interested under this my will.

IV. **PROVD ALWAYS**, and I declare that, notwithstanding any of the trusts and provons hinbefore contd, it shall be lawful for my trees, in case they in their absolute discretion shall think fit so to do, to continue for such period as they shall think desirable my business of —, either alone or in ptnership with any pson or psons who may be in ptnership with me at my decease, or may be subsequently admitted into ptnership by my trees under the provons hinafter contd, and also at any time to enter into any new arrangemt or agreemt with any such ptner or ptners, either by way of substitution for, or modification of, any then subsisting arrangemt or agreemt in relation to such business or otherwise, and if deemed expedient to alter or vary the nature or extent of the sd business, and to retain or employ in such business such pt of my residuary este (whether in excess of my capital or share of capital engaged therein at my decease or not) as my trees may from time to time think proper, and at any time to admit, or concur in admitting, as a ptner or ptners into such business any [son or sons of mine, or any other] pson or psons, upon such terms, and with or without the paymt of a premium, as my trees shall think proper : **AND I FURTHER DECLARE** that my trees may leave the entire managemt of the sd business to any ptner or ptners, so as to be free from the necessity of attending thto, further than requiring such ptner or ptners to render once or oftener in every year an account thof, and without being obliged to examine into the accuracy of such accounts, and may also, in case they shall think proper, leave the entire managemt of such business, or my share therein, to any manager or managers, at such salary or percentage on the profits of the sd business or my share therein, and with such powers and authorities as may be deemed proper, and in case any one or more of my trees shall be unwilling to engage in or to become a ptner or ptners in the sd business, on account of

Power to continue business forming part of residuary estate alone or in partnership. Full form (b).

(b) As to the liabilities of trustees carrying on a business, see 2 Lindley on Partnership, 4th ed. 1060.

the responsibility which he or they may incur thby, such tree or trees may allow his or their co-tree or co-trees to engage in or to become a ptner or ptners in such business, and alone to act in the trusts of this my will so far as relates to the carrying on of such business : AND I FURTHER EMPOWER my trees at any time to sell or dispose of the whole or any pt of the sd business, or my share or interest therein to any [of my sons, or to any other] pson or psons, for such price or sum to be ascertained by valuation or otherwise, and upon such terms as they may think fit : AND I FURTHER DECLARE that, if and when my trees shall wind up the sd business, or shall dispose thof, or of my interest therein, they may make such arrangemts in relation thto as they may think desirable, with full power to settle accounts, and to accept any statemts of account with or without production of vouchers or evidence, and to leave to any agent, ptner, or other pson or psons the collecting of any outstanding debts, and to give time to any ptner or ptners, or pson or psons pchasing or succeeding to the sd business, for paymt of the capital or other sums owing or belonging or payable to my este in respect thof, or to lend any sum [not exceeding £——] out of my residuary psonal este, and from time to time to continue the loan thof to him or them, either alone or jointly with his or their ptner or ptners for the time being, during such period as my trees shall think proper, and either with or without taking secy for the same in addition to the bond or covenant of such ptner or ptners, or pson or psons as afsd, upon the footing of receiving in respect thof either a fixed rate of interest, or a rate varying with or dependent upon the profits of the sd business, and generally to exercise the same powers and discretions in relation to the sd business and premes, as if acting on their own account, and so as to be free from all responsibility and to be fully indemnified by my este in respect of any loss arising in relation thto : AND I FURTHER DECLARE that all profits or interest accruing to my este from the carrying on of the sd business, or from the employmt of my capital or any pt of my este therein on

the footing of a loan or otherwise, shall be treated and applied as income of my residuary este. *Add clause at end of form III.*

v. I AUTHORISE my trees to carry on, [or join in 'carry-
ing on], the trade or business of —, now carried on by
me [the firm of —, in which I am a ptner], during such
period as they shall think fit, and for that ppose to retain
and employ therein the capital, [or my share of the capital,]
which shall at my death be employed therein, and such
additional capital as they shall think fit to advance from
time to time out of my residuary este (c), with power to em-
ploy [or concur in employing], at such salary as they shall
think fit, any manager of the sd business, and generally to
act [or concur in acting] in all matters relating to the sd
business, as if they were beneficially entled thto, [or to my
share and interest therein ;] And also power to delegate all
or any of the powers vested in them in relation to the sd
business to any psons or pson whom they may think fit:
And my trees shall be free from all responsibility, and be
fully indemnified out of my este in respect of any loss arising
in relation to the sd business.

The same.
Short form.

vi. I AUTHORISE my trees, if they shall in their dis-
cretion think fit, to permit the whole or any pt of the
amount, which on taking the ptnship accounts shall appear
to be due to my este as and for my share and interest in
any ptnship business in which I may be engaged at my
decease, to remain in the sd business on the footing of a
loan, for such period as they may think proper, upon the
terms of receiving interest for the same, either at a fixed
rate or at a rate varying with or dependent on the profits of

Power to
leave
capital in
business
on loan.
A full
form.

(c) For a farm say, "with power for that ppose to cultivate, drain, improve, and manage any farms held by me at the time of my death, and to sell and dispose of the live and dead stock for the time being thereon, and the crops raised on the same, and also to pchase such live and dead stock, seeds, and manures as they may think fit, and also."

Variation
for farm.

the business, and upon such other terms in all respects as may be deemed proper or expedient; and from time to time to renew or continue such loan wholly or partially, and to agree to any alteration or modification of the terms thof, so that the repaymt of the sd capital, with the interest thereon as agrd, shall be secured by the bond or covenant of the pson or psons to whom the loan shall be made, either with or without any other secy for the same, as my trees shall think fit: And my sd capital or any pt thof may be so allowed to remain in the sd business, notwithstanding that my trees for the time being, or any or either of them may be engaged or concerned therein, and notwithstanding any change from time to time in the psons carrying on the same or in the character of the business, and my trees shall not be in anywise responsible for any loss thby occasioned.

Power or direction to executors to exercise option of becoming sleeping partners.

VII. I AUTHORISE my exs to exercise at their discretion [I DIRECT my exs to exercise] the option given to them by the articles dated, &c., which now regulate my ptnship in the firm of —, or any option which may be available in that behalf at my decease, of becoming sleeping ptners in such firm: And I declare that [in case my exs shall elect to become such sleeping ptners] my share from time to time in the capital of the sd firm shall be considered as forming pt of the capital of my residuary este, and that my share from time to time in the profits thof and interest on capital, as from the last day immediately preceding my death appointed by the sd articles of ptnship for taking the annual general account of the sd ptnship business, shall be considered and applied as income of my residuary este.

Power to executors to make arrangements for admission of testator's sons into his business.

VIII. I AUTHORISE my exs [and trees] to make any arrangemts with the ptners or ptnr for the time being of the firm of —, in which I am now a ptnr, for the admission into the sd firm of any son or sons of mine as a ptnr or ptners, for the whole or any pt of my share in the sd business; And on the admission of such son or sons either to sell to him or them my share in the sd business on such terms as may be reasonable, or to allot such share to

him or them in satisfson, wholly or in pt, of his or their share or shares in my residuary este; and to leave the whole or any pt of the pchase money to be pd by any such son as a loan to him, repayable with interest at the rate of 5 per cent. per annum by such instalmts, at such times, and in such mnner as may be agrd upon, but so that the repaymt of such instalmts and interest shall be secured by the bond or covenant of such son.

IX. I DECLARE that my sons shall have the option in succession according to seniority, [on attaining the age of ——— years,] of succeeding to my [share in the] business [of the firm] of ———, [in which I am now a ptner,] such option to be decl'd in writing by each son within such time as my exs shall appoint in that behalf, by a notice given to such respive sons in succession; And I declare that immediately on any son of mine electing to succeed to such business, [share, my exs shall make all necessary arrangemts for introducing him into the sd firm for the whole of my share therein: And I declare that from and after the admission of such son into the sd firm] the whole of [my share in] the sd business and the capital thof, shall belong to him, and he shall be debited with the value thof, (estimated in such mnner as my exs shall think fit) in the division of my este, and in case such value shall exceed the total amount of the share of such son in my este, he shall refund such excess to my este by instalmts or otherwise, in such mnner as my exs shall determine: Provd always that the profits of the sd business until any son of mine shall elect to succeed thto [share of profits coming to my este until the admission of such son] shall be treated as income of my residuary este.

Sons to have option in succession of succeeding to testator's business, or to a share in a partnership.

X. I AUTHORISE my exs [and trees] in their absolute discretion to make any arrangemts which may be feasible, and which they may think fit, for securing the introduction of any infant son or sons of mine, when and as he or they shall resply attain the age of twenty-one years, or within a reasble time afterwards, as a ptner or ptners into the sd

Power to executors to reserve right of introducing testator's younger son or sons on attain-

ing twenty- business, [firm, for pt of the share of my son or sons who
one into shall be admitted under such arrangemt as afsd, *see forms*
busi- VIII. and IX.] upon such terms as may be agrd upon.
ness (d).

GENERAL LEGACIES.

Pecuniary I. I BEQUEATH the sum of £—— to A. of, &c. [free from
legacy (f): legacy duty] (e).

The same. II. I BEQUEATH the following legacies [free from legacy
Several. duty] namely, the sum of £—— to A. of, &c., the sum of
£—— to B. of, &c., and the sum of £—— to C. of, &c.

Demon- III. I BEQUEATH to A. of, &c., the sum of £——, to be
strative raised by the sale of a sufficient pt of the Consolidated £3
legacy. per Cent. Annuities now standing in my name, as the
primary fund for the paymt thof, and in case I shall not be
possessed of such stock or a sufficient amount thof at my
decease, I direct that the sd legacy, or so much thof as the
sd stock shall be insufficient to pay, shall be pd out of my
general psonal este.

Legacy in IV. I BEQUEATH to, *trustees*, [their exs, ads, and as-
trust. signs (g),] the sum of £——, upon the trusts [and with
and subj to the powers and provons] hinafter decld and
contd concerning the same.

(d) This form may be added to form VIII. or IX.

(e) It should be remembered that by the Customs and Inland Revenue Act, 1881, s. 42, the exemption of legacies under £20 from duty is abolished, so that the practice of giving legacies of 19 guineas should be discontinued; and that by s. 41 the one per cent. duty on legacies to children and grandchildren is done away with.

(f) The same form may now be used for an absolute legacy to a married woman as to a man, as it will be her separate property as if she were a *feme sole*, without express provision, under the Married Women's Property Act, 1882, see p. 439, note.

(g) The words here bracketed are altogether unnecessary, and if preferred may be omitted.

V. I BEQUEATH to, *trustees*, [their exs, ads, and as-
signs (g)], the sum of £——, Consolidated £3 per Cent. Stock legacy in trust.
Annuities, to be appropriated or pchased in their names,
out of my general psonal este, and to be held upon the
trusts [and with and subjt to the powers and provons] hin-
after decld and contd concerning the same.

VI. I BEQUEATH to my wife C. the sum of £——, to be pd Immediate legacy to wife.
to her within one calendar month [or, as soon as may be]
after my decease for her immediate requiremts.

VII. I BEQUEATH to A. of, &c., the sum of £——; but in Legacy to a person or to his children by substitution (a).
case he shall die in my lifetime, then I bequeath the same
to his children or child (if any), who shall be living at my
decease, and shall attain the age of twenty-one years, or
being daughters or a daughter, shall marry, if more than
one in equal shares.

VIII. I BEQUEATH the following legacies, namely, the sum The same. Several.
of £—— to A. of, &c., the sum of £—— to B., of, &c.,
and the sum of £—— to C. of &c.; but in case any of the
sd legatee shall die in my lifetime, then I give his [or her]
legacy to his [or her] child or children (if any) who shall,
&c., as in *preceding form*.

IX. I BEQUEATH the sum of £—— to A. of, &c., and if he Legacy with provision against lapse in case of legatee dying leaving issue.
shall die in my lifetime leaving issue surviving me, I
declare that such legacy shall not lapse but shall vest in
his representatives as pt of his psonal este in the same
manner as if he had survived me and died immediately after
me (b).

X. I BEQUEATH the following legacies, namely, the sum The same to several.

(g) See last note.

(a) Compare form IX.

(b) A legacy saved from lapse in this way would devolve, as part of the legatee's estate, in the same manner as a legacy to a descendant of the testator saved from lapse by the Wills Act, s. 33. As to the importance of the last part of the clause, where the legatee is not a descendant of the testator, see *In re Coleman*, 4 Ch. D. 165. The legacy in this case would pass under the will, if any, of the legatee, or otherwise go to his next of kin, and would be subject to his debts, which would sometimes be a reason for giving it to the children in substitution, as in form VII.

of £—— to A., of, &c. the sum of £—— to B. of, &c., and the sum of £—— to C. of, &c., and I declare that in case any of such legatees shall die in my lifetime leaving issue surviving me, the legacy hinfefore bequeathed to him [or her] shall not lapse but shall vest, &c., *as in last form*.

Legacy to vest at twenty-one.

The same to a female at twenty-one or marriage.

XI. I BEQUEATH the sum of £—— to A., of, &c., in case and when he shall attain the age of twenty-one years.

XII. I BEQUEATH the sum of £—— to A., of, &c., in case and when she shall attain the age of twenty-one years, or marry under that age [in which last-mentd case her rect for the same shall, notwithstanding her minority, be a sufficient discharge (c)].

Legacy to female with a restraint on anticipation during coverture (d).

XIII. I BEQUEATH the sum of £—— [free of legacy duty] to B. [the wife of C.], of, &c.; *PROVD ALWAYS* and I declare that in case the sd B. shall at the time of my decease be or shall afterwards and before paymt of the sd legacy become under coverture the same shall not be paid to her, but shall be paid to my trees, and retained by them during her coverture, and invested by them for the benefit and with the consent of the sd B., in any investmts hby authorised in the case of my residuary este, with power with her consent to vary such investmts, and that the sd B. shall not have power during coverture to dispose of or charge the sd legacy or the future income thof by way of anticipation.

Legacies with interest to two persons at twenty-one, with survivorship.

XIV. I BEQUEATH to A. and B., the sons of ——, the sum of £—— each [free of legacy duty], to be paid to them resply if and when they shall resply attain the age of twenty-one years, with interest at the rate of —— per cent. per annum from my decease; and in case either of them shall die in my lifetime, or before he shall attain that age, I bequeath the legacy hinfefore given to him so

(c) It is doubtful whether such a power can be validly given to an infant. See *Re Cardross*, 7 Ch. D. 728; *Re d'Angibau*, 15 Ch. D. 228. As to legacies to females, see p. 674, note.

(d) As to restraining anticipation in case of an absolute legacy, see *Re Ellis*, L. R. 17 Eq. 409; *Re Clarke*, 21 Ch. D. 748; and as to the effect of the Married Women's Property Act, 1882, see p. 439, note.

dying, with interest as aforesaid, to the survivor of them if and when he shall attain the age of twenty-one years; and in case both of them shall die in my lifetime, or before attaining that age, the said legacies shall sink into my residuary estate (e).

XV. I BEQUEATH the sum of £—— to my son —— if he shall attain the age of twenty-one years, with interest (f) in the meantime at the rate of 4 per cent. per annum, to be computed from my decease, and to be paid to his guardians or guardian for his maintenance and education; and if the said —— shall die under the age of twenty-one years, then the said legacy shall sink into my residuary estate (e).

Legacy to child at twenty-one, with interim maintenance.

XVI. I BEQUEATH the sum of £—— unto and equally between such of my children, as being sons attain the age of twenty-one years, or being daughters attain that age or marry; and I direct that such legacy shall carry interest in

Legacy to class of children at twenty-one, with interim maintenance (g).

(e) A gift to a person at twenty-one, or if he shall attain twenty-one, without more, is a contingent gift (Hawkins on Wills, p. 223); but if the interim interest is given to the legatee, or to some other person to be applied for his benefit, the legacy vests at the testator's death (*Hanson v. Graham*, 6 Ves. 239; Hawkins, p. 227). Hence the necessity for the direction as to the legacy sinking into the residue.

As to contingent legacies.

(f) A legacy which is contingent on the legatee attaining twenty-one, or any other event, does not in general carry interest pending the contingency; but a gift to a child of the testator, or other person to whom he stands in *loco parentis*, would, unless a contrary intention is shown, carry interest for maintenance during minority: see 2 Williams Executors, 7th ed. p. 1428. If in that case maintenance is not intended, it should be expressly excluded by adding, "but without interest in the meantime."

Interest on legacies, and maintenance.

By the Conv. Act, 1881, s. 43, provision is made for the maintenance of an infant out of the income of any property, "held by trustees in trust for" the infant, whether absolutely, or contingently; but this it is conceived does not apply to a legacy not carrying income either expressly, or by implication from the legatee being a child or otherwise. And even where the legacy carries interest, but is not given to trustees in trust for the infant, the Act would not apply unless the executors could be regarded as trustees within its meaning. Express provision for maintenance, &c., should therefore be made in that case, if so intended.

Maintenance clause in Conv. Act, 1881.

(g) A gift to such children as attain twenty-one as a class, with interim maintenance, vests only in those who actually attain twenty-one, and not in the children living at the testator's death, as it would if the gift had been *nominatim*. Hawkins on Wills, p. 228.

the meantime at the rate of 4 per cent. per annum from my decease, to be applied by my trees at discretion in or towards their respive maintenance and education, with power either themselves so to apply the same, or to pay the same to the guardians or guardian of such respive children without seeing to the application thof.

General
direction
as to in-
vestment,
&c., of
infants'
legacies.

XVII. AND IN CASE any of such legatees shall at the time when his or her legacy would otherwise become payable be a minor [and in the case of a female, a spinster], I direct that his or her legacy shall be invested by my trees in their names [or under their legal control] in the public stocks or funds, or any other investmts authorised by law in the case of trust money [or, in any investmts hby authorised in the case of my residuary este], with power to vary such investmts at discretion, [and that the whole or any pt of the income thof shall during the minority [and in the case of a female, spinsterhood] of such legatee, be applied by my trees at their discretion for or towards the maintenance, education, or benefit of such legatee, either directly, or by paying the same to his or her parent or guardians or guardian, without seeing to the application thof, and that any surplus income shall be accumulated by the investmt thof, and of the resulting income thof, as an addition to the capital of such legacy, but with power to my trees to apply any such accumulations in any subsequent year or years for the maintenance, education, or benefit of the legatee (a)] [*add power of advancement, if desired, see infra, "MAINTENANCE, &c."; and if the legacies are contingent, add: "Provd always that in case any of the sd legatees shall die before attaining a vested interest in his or her legacy, the same shall sink into my residuary este."*]

Legacy
to god-
children.

XVIII. I BEQUEATH the sum of £—— to each of my god-children, and I declare that in case any doubt shall arise as to who are the objects of this bequest, my exs shall be at

(a) The words in this bracket may be omitted in reliance on the Conv. Act, 1881, s. 43.

liberty to act upon such evidence as they shall think fit, and their determination shall be conclusive, and that any god-child who shall not claim his or her legacy within one year from my decease shall not be entitled thto.

XIX. I BEQUEATH to each of them the sd A. and B. [to each of my exs [and trees] other than the sd A.], in case they shall respily prove my will [and accept the trusts thof], *or*, "for their trouble," the sum of £——. Legacies to executors and trustees.

XX. I REQUEST my trees for the time being to hold a meeting once in every half year to examine and adjust the accounts of my este, and I authorise each of them to retain and pay himself the sum of £—— for the trouble and expense of attending each of such meetings. Power to trustees to charge fees.

XXI. I BEQUEATH to my servant A. the sum of £—— [free of legacy duty], in addition to any monies owing to him from me for wages or otherwise at my death [in recognition of his long and faithful services, *or*, "provided he shall be in my service at the time of my decease"]. Legacy to a servant (b).

XXII. I BEQUEATH to each of my domestic [upper] servants [clerks], who shall be in my service [employed in my business] at the time of my decease, the sum of £—— [the amount of one year's wages, *or*, salary], [free of legacy duty], in addition to any monies which may be owing by me to them respily at my decease. Legacies to servants or clerks (b).

XXIII. I BEQUEATH to my exs the sum of £—— [free of legacy duty], to be divided among, or applied for the benefit of, such of my servants who shall be living with me at the time of my decease, and in such proportions and mner as my exs shall in their absolute discretion think fit. Legacies to servants at discretion of executors.

XXIV. I BEQUEATH to the — Institution the sum of £—— [free of legacy duty], to be paid [togr with the duty *charity* (c)]. Legacy to a charity (c).

(b) As to legacies to servants, see 4 Dav. Prec. p. 75, note; 1 Jarm. on Wills, p. 325.

(c) As to legacies to charities, and especially as to the operation of the Mortmain Act, 9 Geo. II., c. 36, see Jarman on Wills, vol. I., pp. 205, *et seq.*, 4 Dav. Prec., 128, note.

thereon] out of such pt of my este (d) as can be lawfully bequeathed for charitable ppses, and to be applicable for the general ppses of such institution ; and I declare that the rect of the treasurer or other proper officer for the time being of such institution shall be a sufficient discharge for the same.

Several charitable legacies.

XXV. I BEQUEATH the following charitable legacies [free of legacy duty], and I direct that the same [togr with the duty thereon] shall be paid out of such pt of my este (d) as may lawfully be disposed of for charitable ppses, that is to say, unto the — Society the sum of £——, unto the — Institution the sum of £——, &c., and I declare that the rect of the treasurer or other proper officer for the time being of the same respive societies and institutions shall be a sufficient discharge for the same respive legacies.

Legacies to charities to be selected by executors.

XXVI. I BEQUEATH the sum of £—— [free of legacy duty], to be paid [togr with the duty thereon] out of such pt of my este (d) as may lawfully be disposed of for charitable ppses, unto or for such charitable institution or institutions or object or objects (e) in England as my acting exs or exor may in their or his absolute discretion select, and to be paid to or for such institutions or objects, if more than one, in such proportions as my sd exs or exor may think proper.

Direction that assets shall be marshalled in favour of charities.

XXVII. AND in order to give full effect to the bequests hinbefore contd for charitable pposes, I direct that my funeral and testamentary expenses and debts and the legacies (other than charitable legacies) bequeathed by this my will or any codicil hto, and the legacy duty on any such legacies bequeathed free of duty shall be paid out of such pt of my psonal este as may not lawfully be bequeathed for charitable pposes as the primary fund, and in case only of

(d) This is not confined to the *personal* estate, as the testator may have *real* estate *abroad*, which may be lawfully devoted to charity.

(e) A bequest at the discretion of executors to charitable purposes or other indefinite purposes not charitable (such as benevolent), is void if there is no apportionment in the will of the bequest ; 1 Jarman on Wills, 214 ; 4 Dav. Prec., p. 312.

the same being insufficient for paymt thof then out of such pt of my psonal este as may be bequeathed for charitable pposes as the ultimate fund.

XXVIII. AND I direct that, if necessary, my assets shall be marshalled so as to leave such pt of my este as may lawfully be bequeathed for charitable pposes, or a sufficient pt thof applicable to the paymt of the charitable legacies bequeathed by this my will or any codicil hto, and the legacy duty on any such legacies bequeathed free of duty.

XXIX. I BEQUEATH the sum of £—— to—— in addition to any monies which may be owing to him from me at the time of my death.

XXX. I DECLARE that any legacy hby bequeathed to any pson to whom I may be indebted, or to the husband or wife of any such pson, shall be in addition to, and not in satisfon of, the monies which may be so owing by me to him or her, or to his or her wife or husband.

XXXI. I BEQUEATH to A., now residing with —— [the natural, or, "reputed," son of ——] the sum of £——.

XXXII. I BEQUEATH the sum of £——, with interest at the rate of 4 per cent. per annum from the day of my death to the trees or tree of an indre of settlemt dated, &c., executed on the marre of my daughter ——, in satisfon of a covenant [bond] entered into by me in such settlemt [on such marre] for paymt of such principal sum and interest to such trees or tree.

XXXIII. I BEQUEATH the sum of £—— to the psons or pson who shall at my decease be the trees or tree of an indre of settlemt dated, &c. and expd to be made, &c. made on the marre of my daughter ——, to be held upon the trusts, and with and subjt to the powers and provons by and in such settlemt decl'd and contd concerning the monies to arise from a sale under the trusts therein contd

(f) See notes to *Ex parte Pye*, 2 Lead. Cas. Eq.

(g) All that is necessary in this case is, that the legatee should be sufficiently identified; see 2 Jarman on Wills, ch. xxxi.

of the sum of £——— Annuities thby settled, *or*, “concerning the ppty thby settled or agrd to be settled by or on the pt of my sd daughter,” *or*, “concerning the after-acquired ppty of my sd daughter thby agrd to be settled,” or such of the same trusts, powers, and provons as may be then subsisting, and so that such trusts, powers, and provons shall take effect in relation to the sd sum of £——— in the same mner in all respects, as far as the case will admit, as if such sum had formed pt of the monies to arise from such sale, *or*, “of the ppty originally settled or agrd to be settled by or on the pt of my sd daughter,” *or*, “of such after-acquired ppty of my sd daughter,” [*save and except, &c., insert any modifications in the trusts*].

Legacy to be repaid on succeeding to a title.

XXXIV. I BEQUEATH the sum of £——— to ——, upon condition that if he shall (a) succeed to the earldom of ——, *or*, “to the baronetcy now vested in ——,” he shall repay the same to my exs, to the intent that the same shall fall into my residuary este.

General direction that legacies are to be free of duty (b).

XXXV. I DECLARE that all the pecuniary legacies hinfere bequeathed shall be free from legacy duty, which shall be paid out of my general personal este, [*or if the legacies are given out of a particular fund, “out of the sd, fund.”*]

Direction to pay legacies in three months.

XXXVI. I DIRECT that the legacies hinfere bequeathed to the sd A. and B. shall be paid within three calendar months after my decease.

Declaration as to priority of legacies.

XXXVII. I DECLARE that the legacy of £——— hinfere bequeathed to the sd —— shall be payable in priority to

(a) Other forms of conditions are, “if he shall become a field officer in her Majesty’s army”: “if he shall be instituted to an ecclesiastical benefice, the net annual value of which shall exceed the sum of £———”: “if he shall not before or within —— years from my decease take the degree of Bachelor of Arts at the University of ——.” See also p. 447, note (a).

(b) See p. 674, note (c).

any other pecuniary legacy bequeathed by this my will [or any codicil hto.]

XXXVIII. I DIRECT that the several pecuniary legacies The same. Another form. hbefore bequeathed to the sd, &c., shall have priority in the order in which the same are hbefore bequeathed, but so that legacies given to a class shall have no priority as between themselves.

XXXIX. AND I DECLARE that if the monies to arise from Direction that certain legacies shall abate in case of deficiency. the sale and conversion hby directed or otherwise forming pt of my este shall not be sufficient to pay my funeral and testamentary expenses and debts, and all the legacies hby bequeathed, then the legacies of £—— and £—— hby given to the sd —— and —— shall abate proportionately. ✓

XL. AND I DECLARE that until the sd legacy of £—— Direction for payment of interest on trust legacy or legacies, until raised. hbefore bequeathed in trust for the sd —— and his children, or, “the respive legacies hbefore bequeathed in trust, &c.,” shall be raised and set apart or appropriated, interest thereon [resply] at the rate of 4 per cent. per annum to be computed from [the expiration of one year after] my decease shall be paid or applied by my trees out of my residuary este in the same mnner as the income of the sd legacy [respive legacies] would be payable or applicable.

XLI. PROVD ALWAYS, and I hby declare that it shall not be incumbent on my exs or trees to raise any legacy Power to postpone raising of trust legacies. hbefore bequeathed in trust until the capital of such legacy or some pt thof shall become payable, or, “until the same in the judgment of my exs or trees can conveniently and with a due regard to the interests of all pties concerned be raised,” but until the raising thof interest thereon resply, &c., *as in last form.*

XLII. I BEQUEATH the following legacies charged upon, and raiseable and payable out of the hereds situate, &c., hinafter devised to —— (that is to say), the sum of £—— to ——, &c. Gift of legacies charged on specific real estate.

XLIII. I HBY CHARGE all the legacies hbefore bequeathed Charge of legacies on real estate, on my real este, [situate, &c., hinafter devised to ——] in

with direc-
tions for
raising
them.

case of the deficiency of my psonal este, with power for my trees to raise the amount of such deficiency, togr with the costs of raising the same, by sale or mtge of such real este, or any pt or pts thof, and so that any such mtge may be in fee simple, or for any term of years, and with or without a power of sale, and to execute and do such assur-ances and things as may be necessary or proper for effectu-ating any such sale or mtge : and I declare that no pchaser or mtgee shall be bound to ascertain whether such deficiency of my psonal este exists, or whether more money than is required is raised, or to see to the application of the money raised, and that the declon in writing of my trees that no further sum can be required to be raised under the present power shall be conclusive in favour of any pchaser, mtgee, lessee, or other pson, acquiring any interest in the sd real este, or any pt thof.

BEQUESTS OF ANNUITIES.

Bequest of
annuity.

I. I BEQUEATH to A. of, &c., during his life, an annuity of £—— [free from legacy duty], commencing from my death, and to be payable half-yearly, *or*, “quarterly,” on the —— day of ——, &c., *or*, “on the usual quarter days,” the first paymt or an apportioned pt thof from my decease to be made on such of the sd days as shall happen next after my death, [*or*, to be payable half-yearly, *or*, “quarterly,” *or*, “weekly,” and the first paymt thof to be made at the expiration of six, *or*, “three,” calendar months from, *or*, if weekly, “as soon as may be after,” my death.]

Several
annuities.

II. I BEQUEATH the following annuities, that is to say, to A. of, &c., an annuity of £—— during his life, to B. of &c., an annuity of £—— during his life, &c. ; and I declare that such respive annuities shall [be free from legacy duty,

and shall] commence from my decease, and be payable, &c.,
as in form I.

III. I BEQUEATH to A., the wife of B. of, &c., during her life, an annuity of, &c., as in form I., but during [her present or any future] coverture she shall not have power to anticipate the same.

To woman without anticipation during coverture (c).

IV. I DECLARE that no female to whom an annuity is hitherto bequeathed shall during coverture have power to anticipate the same.

General declaration that annuities to females shall be without anticipation.

V. I BEQUEATH to my wife A. during her life [widowhood] an annuity of £—— [and so long as she shall remain unmarried an additional annuity of £——, such respective annuities] to commence from my death, and to be payable, &c., as in form I., [but during any future coverture she shall not have power to anticipate the same].

Gift of annuity to wife.

VI. I BEQUEATH to A. of, &c., and B. of, &c., and the survivor of them, an annuity of £—— during their joint lives, and the life of the survivor [free from legacy duty], commencing from my death, &c., as in form I.

Variations where it is to cease or be reduced on second marriage.

VII. PROVIDE ALWAYS and I declare that if the sd A., annuitant, shall at the time of my death be, or afterwards become, bankrupt, or shall assign, or charge, or affect to assign or charge his sd annuity or any pt thereof, or if any other event shall happen in my lifetime or after my death, whereby, if such annuity belonged to him absolutely, he would be deprived of the personal enjoyment of the same or any pt thereof, then such annuity shall cease as if he were dead, [or, shall cease to be payable to him, and shall thenceforth during the remainder of his life be payable to my trustees in trust, that my trustees shall thereafter during such period or periods either continuous or discontinuous, as they shall in their absolute discretion think fit, pay all or any pt of such annuity, or apply the same for the maintenance and personal support or benefit of the sd A. and his wife, if any, and children or child and more remote issue for the time being in existence,

Bequest of annuity to two persons during their joint lives and life of survivor.

Proviso for ceasing of annuity on alienation. Variation where it is to be afterwards applied at discretion of trustees for the benefit of the annuitant and his family.

(c) As to gifts to married women and the effect of the Married Women's Property Act, 1882, see p. 489, note.

whether minors or adults, or any of such psons to the exclusion of the others or other of them; and so much of the sd annuity as shall not be applied or disposed of by my trees under the discretionary trust or power lastly hinbefore contd, shall sink into and be applied as pt of the income of my residuary este, *or*, "the trust premes out of which the sd annuity is payable"].

General proviso for ceaser of annuities on alienation. With variation as in last form.

VIII. PROVD ALWAYS, and I declare that if any of them, the sd, *annuitants*, [*or*, the respive psons to whom annuities are hinbefore bequeathed], shall at the time of my death be, or afterwards become, bankrupt, or shall assign, or charge, or affect to assign, or charge his or her respive annuity, or if any other event shall happen in my lifetime or after my death whby, if such annuity belonged to him or her absolutely, he or she would be deprived of the psonal enjoymt thof, then such annuity shall cease as if he or she were dead, [*or*, shall cease to be payable to him or her, and shall thenceforth during the remainder of his or her life be payable to my trees in trust that my trees shall thereafter during such period or periods either continuous or discontinuous, as they shall in their absolute discretion think fit, pay all or any pt of such annuity, or apply the same for the maintenance and psonal support or benefit of the annuitant who shall have incurred such forfeiture, and his wife, if any, &c., *continue as in preceding form*].

Power to raise and pay annual sums for benefit of a spendthrift.

IX. I HBY authorize my trees, if in their uncontrolled discretion they shall think fit, to raise out of the income of my residuary este in every year, commencing from my death, during the life of — of, &c., or during any shorter period or periods, either continuous or discontinuous, any sum or sums of money not exceeding in the whole £ — in any one year [free of legacy duty] and to pay the same by quarterly, monthly, or weekly paymts to the sd — or to apply the same for his maintenance, support, or benefit, at the absolute discretion of my trees, unless and until he shall become bankrupt, or any other event shall happen, whby if the same belonged absolutely to him he would be deprived of

the psonal enjoymt thof, and in case of his bankruptcy or the happening of any such other event my trees shall thenceforth, in their uncontrolled discretion, pay or apply every sum so raised to or for the benefit of the sd — and his wife and child or children, and remoter issue, for the time being, if any, and whether minors or adults, or any of such psons, to the exclusion of the others or other of them, as my trees shall think fit; [And I declare that if any action or proceeding shall be instituted for the ppose of administering my este or executing the trusts of my will the power lastly hinbefore contd shall be exercisable by my trees without being subjt to the control of the Court (d).]

X. AND SHALL after the death of my sd wife, out of the income of the sd trust premes, pay an annuity of £—— to — during his life, and an annuity of £—— to — during her life, such respive annuities to commence from the death of my sd wife, and to be payable half-yearly, or, “quarterly,” and the first paymt thof to be made at the expiration of six, or, “three,” calendar months from her death [for a female add, and so that the sd — shall not during [her present or any future] coverture have power to anticipate her sd annuity; and if the annuities are to be inalienable in all cases add form VIII., *mutatis mutandis*].

Trust to pay annuities out of residue after wife's death.

XI. I AUTHORIZE, or, “direct,” my trees to appropriate a sufficient pt of [my residuary este] for answering by the annual income thof the several annuities hinbefore bequeathed, or such of them as shall for the time being be payable [with power in case of the annual income at any time proving insufficient to resort to the capital of the appropriated fund for the paymt of such annuities] [or, and I declare that in case the annual income of the appropriated fund shall at the time of appropriation be sufficient to satisfy the sd annuities, such appropriation shall be a complete satisfaction of the trust to provide for such annuities, and that in case the income of the appropriated fund shall at any

Power or direction to appropriate fund to answer annuities.

(d) See as to this *Brophy v. Bellamy*, L. R. 8 Ch. Ap. 798; *Davey v. Ward*, 7 Ch. D. 754.

time prove insufficient for paymt of the sd annuities in full, they shall abate proportionately]; And I declare that as and when any of the sd annuities shall cease, a corresponding pt of the appropriated fund shall sink into my residuary este, or, "shall revert to and become subj to the trusts hby dect concerning the sd trust premes out of which the same shall have been appropriated as afsd."

Power to
purchase
annuities.

XII. I AUTHORIZE my trees at any time or times, if and when they shall consider it convenient for the administration, winding-up, or distribution of my este, or for any other reason, to pchase annuities in the names of the several annuitants, or (if the case shall so require) in the names of my trees, from Government or any public co [or any private pson or psns, but so that any annuity so pchased from a private pson or psns shall be secured on real or leasehd este], for the ppose of answering or satisfying the respive annuities hinbefore bequeathed, or any of them; And I declare that any annuity so pchased in the names of my trees shall be paid or applied by them to the pson or psns for the pposes and in the mner to and for and in which the annuity in respect of which the same was pchased is hinbefore directed to be paid or applied.

Direction
to purchase
an annuity.
Variation
where it
is to be
inalien-
able (c).

XIII. I DIRECT my trees to pchase in their names from Government or any public co an annuity of £—— [free from legacy duty] for the life of, *annuitant*, to commence from my death, and to be payable half-yearly [quarterly], and to pay the same when pchased, and in the meantime in lieu thof to pay a like annuity out of the income of my residuary este, to the sd, *annuitant*, [but so that he shall not be allowed to have the value of such annuity in lieu thof, and so that in case of his becoming bankrupt, or alienating, or charging

(c) A direction that the annuitant is not to have the value of the annuity is void, *Stokes v. Cheek*, 28 Beav. 620; unless there is a gift over, *Power v. Hayne*, L. R. 8 Eq. 262; or proviso for cesser, *Halton v. May*, 3 Ch. D. 148, on alienation, but such a proviso is repugnant and void if the annuity is to be purchased in the name of the annuitant himself; *Hunt Boulton v. Furber*, 3 Ch. D. 285.

the sd annuity, or affecting so to do, or the happening of any other event whby if the sd annuity belonged absolutely to him he would be deprived of the psonal enjoymt thof, the sd annuity, whether the same shall have been pchased or not, shall cease to be payable to him, and shall sink into and form pt of the income of my residuary este.]

XIV. I BEQUEATH to A. of, &c., during his life, an annuity or rent-charge of £—— [free from legacy duty], commencing from my death, and to be payable, &c., *as in form 1.*, and [togr with the legacy duty thereon] to be charged upon, and issuing and payable out of my freehd *or*, “leasehd,” mes-suages, lands, &c., hinafter devised [bequeathed] to D. of, &c., and subjt and charged as afsd, I DEVISE, &c.

Bequest of annuity charged on real or leasehold property.

XV. AND I declare that the sd annuities hinbefore be-queathed to the sd A., B., and C. [and the legacy duty on such of them as are bequeathed free of duty], shall be charged upon, and issuing and payable out of all my real and leasehd estes [*or*, the freehd, copyhd, and leasehd mes-suages, lands, and hereds, situate, &c., hinafter devised and bequeathed to D., of, &c.], [and shall be exclusively so charged in exoneration of my general este, *or*, “in aid of my general psonal este, which shall be the primary fund for the paymt thof”]; [and I empower the sd A., B., and C., respby, [and their respive assigns (*g*)], to recover paymt of the sd respive annuities by distress and entry upon, and rect of the rents and profits of the hereds so charged thwith as afsd, or any pt thof, when in arrear for twenty-one days], [and the legacy duty on such of them as are bequeathed free of duty], and subjt to the paymt of the sd respive annuities [and legacy duty] so charged as afsd, and to all powers and remedies for the recovery thof, I DEVISE, &c.

Charge of several annuities on real or leasehold property, with powers of distress and entry (*f*).

XVI. PROVD ALWAYS and I authorize my trees in their un-

Power to continue

(*f*) For a full form of powers of distress and entry, see p. 560. These powers may be omitted altogether, as they are given by the Conv. Act, 1881, s. 44; see p. 558.

(*g*) The words bracketed will, of course, be omitted if the annuities are to be inalienable.

allowances
paid by
testator.

controlled discretion to continue any annuities or charitable or other allowances or donations, which I shall have paid in my lifetime, or any part thereof, during the respective lives of the persons to whom the same shall have been paid by me, or during any shorter periods, continuous or discontinuous.

SPECIFIC DEVISES (a).

Specific
devise of
freeholds
or copy-
holds in
fee.

I. I DEVISE to A., of, &c., his heirs and assigns (b), all my freehold [copyhold] messuage, or tenement, with the outbuildings and lands belonging to, or held with the same, situate, &c. [and commonly known as —], now in the occupation of —, with the appurtenances thereof [where the testator has other adjoining property, say, “with the rights, easements, and appurtenances thereto belonging or reputed to belong or therewith held or enjoyed” (c)] (d).

Specific
devise and
bequest of
real and
leasehold
estates in
certain
counties,
&c.

II. I DEVISE and bequeath all and every my freehold, copyhold, and leasehold messuages, lands, tenements, and hereditaments, situate and being in the several parishes of, &c., or elsewhere, in the counties of, &c., or, “in the several parishes and places following (that is to say), &c.,” UNTO A. of, &c., his heirs, executors, administrators, and assigns, according to the tenure thereof respectively.

(a) For devises in tail, see DEVISES IN STRICT SETTLEMENT.

(b) As an estate in fee simple may now by the Conv. Act, 1881, s. 51, be limited in a deed by those words, without the word “heirs,” in the same manner as in a will, it would be better, if that form of limitation (which, however, has no advantage in brevity) should come into general use in deeds, to use it in wills also.

(c) See above, p. 663, note.

(d) If so intended add, “and also all rents due or accruing due at the time of my death from or in respect of the same hereditaments and premises;” see p. 696.

III. I DEVISE all, &c., *parcels*, with the appurts thof, unto and to the use of A. [the wife of B.], of, &c., her hrs and assigns, but so that during [her present or any future] coverture she shall not have power to dispose of or charge the sd hereds and premes, or the future rents and profits thof by way of anticipation.

Devise of freeholds or copyholds to a woman, with restraint on anticipation (e).

IV. I DEVISE all, &c., *parcels*, To THE USE of A. [the wife of B.], of, &c., and her assigns during her life [without impeachment of waste]: AND AFTER the death of the sd A., To SUCH USES upon such trusts, and subj't to such powers and provons as the sd A. shall, whether covert or sole by will or codicil, and while sole by any deed or deeds revocable or irrevocable, appoint; AND IN DEFAULT of, and subj't to any such appointmt, To THE USE of the sd A. her hrs and assigns: PROVD ALWAYS that the sd A. shall not during [her present or any future] coverture have power to dispose of or charge the sd hereds and premes or her life este therein by way of anticipation.

Devise to a woman for life, with remainder as she may appoint, and in default to her in fee, so as to restrain anticipation (f).

V. I DEVISE all, &c., *parcels*, To THE USE of all or any my children or child who shall be living at my decease, [the children or child of the sd —, who shall be living at my decease, or born afterwards], their, his, or her hrs and assigns, if more than one in equal shares as tenants in common, and if and so often as any such child shall, being a son, die under the age of twenty-one years, or, being a daughter, die under that age and without having been married, then as well as to the original share of the child so dying, as to any share or shares which shall have accrued to him or her by virtue of this present limitation, To THE USE

Devise to children of testator or another person as tenants in common in fee with cross limitations over on death under 21, &c. (g).

(e) As to gifts to married women under the Married Women's Property Act, 1882, see p. 439, note; and as to restraining anticipation, see the Act, s. 19. The restraint may be effectually annexed to a devise in fee; see before the late Act, *Baggett v. Meuz*, 1 Phil. 627. See also the next form.

(f) This form is substantially the same in effect as the last, which may with advantage be used in preference. Compare form XIII., p. 676, as to personality.

(g) This form is not adapted to a devise to the children of another living person who takes no life estate. See below, TRUSTS FOR CHILDREN.

of the others or other of such children as aforesaid, their his or her heirs and assigns, if more than one in equal shares as tenants in common: AND IN CASE there shall be no such child as aforesaid, or all such children if more than one, or such child, if only one, shall die under the age of twenty-one years, and in the case of a daughter or daughters without having been married, then, as to the entirety of the said premises, To THE USE of, &c.

Proviso that devise to a class of children shall include child dying before testator leaving issue (a).

VI. PROVID ALWAYS and I declare that in case any child of mine [of the said —] shall die in my lifetime leaving issue surviving me, the devise hereinbefore continued to my children, [the children of the said —] shall take effect in the same manner as if the child so dying had survived me, and died immediately after me, and so that the share or shares of the said hereditaments and premises devised to him or her, or which he or she would have taken if surviving me, shall devolve upon his or her heirs or devisees as part of his or her estate accordingly.

Devise with provision against lapse in case of devisee leaving issue (a).

VII. I DEVISE all, &c., *parcels*, To THE USE of A., his heirs and assigns, in case he shall survive me, or die in my lifetime leaving issue surviving me, and so that in the latter case the said hereditaments and premises shall devolve upon his heirs or devisees, as part of his estate, in the same manner as if he had survived me and died immediately after me.

Proviso against lapse in case of devisee leaving issue (a).

VIII. PROVID ALWAYS and I declare that, in case the said — [any of them the said —, —, and —] shall die in my lifetime leaving issue living at my death, the devise hereinbefore made to him [or her] shall not lapse, but shall take effect in favour of his [or her] heirs or devisees, and the premises so devised shall become part of his or her estate in the same manner as if he [or she] had survived me and died immediately after me.

Devise to a person or his

IX. I DEVISE all, &c., *parcels*, To THE USE of A., his [her] heirs and assigns; but in case he [she] shall die in my

(a) These clauses are intended to operate in a similar manner to the 33rd section of the Wills Act. See p. 675, note, and below, TRUSTS FOR CHILDREN.

lifetime, then I devise the same premes, To THE USE of his ^{children} [her] children or child, if any, who shall be living at my ^{by substi-} death, their his or her hrs and assigns in equal shares as ^{tution.} tenants in common.

x. I DEVISE all, &c., *parcels*, To THE USE of, *infant*, his ^{Devise} [her] hrs and assigns; but in case the sd, *infant*, shall die ^{to infant} in my lifetime [(d) without leaving issue who shall be ^{with gift} living at my decease], or shall survive me and afterwards ^{over (c).} die under the age of twenty-one years without leaving issue living at his [her] decease, then I devise the same premes To THE USE of —, his hrs and assigns.

xi. I DEVISE all, &c., *parcels*, To THE USE of my wife, C., ^{Devise to} during her life [widowhood], and from and after her decease ^{wife for} [or future marre] To THE USE of my sons, D. and E., their ^{life, with} hrs and assigns for ever, as joint tenants ^{remainder} [or, in equal shares ^{to two} persons ^{in joint} tenants ^{tenancy or} in common, ^{without} trustees.

xii. I DECLARE that such of my daughters as shall for the time being be spinsters shall be entled to the psonal use, occupation, and enjoymt, free from [rent,] rates, and taxes, ^{Devise of} for the period of twelve months after my death (in case they ^{house and} shall resply desire the same) of my residence situate, &c., or ^{furniture} any other dwelling-house in which I may reside at my death, ^{for use of} togr with the stable, coach-house, gardens, pleasure-grounds, ^{unmarried} and appurts thto belonging or thwith held, and the furniture ^{daughters} and effects of domestic, stable, or garden use or ornamt ^{for limited} which at the time of my death shall be in or about the same ^{period.} or appropriated thto, they or she keeping the same in good tenantable repair and condon, and insured against fire, but without liability for fair wear and tear: AND SUBJT thto I devise and bequeath the same hereds, effects, and premes unto my son K., his hrs, exs, ads and assigns abso-

(c) The powers of management and maintenance, &c., during the minority would be supplied in this case by the Conv. Act, 1881, s. 42; see p. 585, note; and powers of leasing and sale, &c., by the Settled Land Act, 1882, see p. 591, note.

(d) The words in brackets will be proper where the legatee is a child of the testator, and it is intended that the 33rd section of the Wills Act shall apply.

lutely, or, "I declare that the same shall form pt of my residuary real and psonal este, and shall pass by the general devise and bequest hinafter contd."

Devise to
uses in
favour of
illegiti-
mate child
so as to
prevent
escheat (e).

XIII. I DEVISE, &c., to such uses, upon such trusts, and with and subjt to such powers and provons, as A., of, &c., shall by any deed or deeds revocable or irrevocable or by will or codicil appoint; and in default of, and subjt to any such appointmt, To THE USE of the sd A. in tail, with remainder To THE USE of my own right hrs.

Gift for
life, sub-
ject to
condition
of resi-
dence (f).

XIV. I DEVISE my mansion-house of — at —, with the outbuildings, gardens, grounds, and lands occupied by me thwith, to A., of, &c., during such pt of his life as he shall make the same his principal residence; And from and after his death, or ceasing to make the sd premes his principal residence, I devise the same, &c.

Devise of
advow-
son (g).

XV. I DEVISE my advowson of — to, trustees, their hrs and assigns, UPON TRUST, if and so often as a vacancy in the sd living shall occur before the sd advowson shall be sold under the trusts hinafter decl'd concerning the same, to present some duly qualified pson thto; and I declare that if, on the occurrence of any such vacancy, my son — shall be duly qualified and willing to hold such living, and shall, in the judgment of my trees, be a fit and proper pson to hold the same, my trees shall present him thto; and upon further trust, during the incumbency of my sd son, or during the incumbency of any other pson with the consent of my

(e) If the property were limited to the devisee in fee, and he were to die without issue, and without having disposed of it *inter vivos* or by will, it would escheat. The object would of course be defeated if the devisee were to appoint to himself in fee.

As to
conditions
of resi-
dence.

(f) A condition of this kind as to residence, besides being otherwise objectionable, appears to be futile, so far as it is in contravention of the exercise by the devisee of the powers of leasing and sale in the Settled Land Act, 1882, and consequently to that extent to be invalid by ss. 51 and 52 of the Act. Possibly the object in view might be attained by vesting the estate in trustees during the life of the intended devisee, and giving him the right to a lease of the mansion, &c., at a nominal rent, forfeitable in case of non-residence.

(g) See other forms, 11 Byth, 780, 800; 4 Dav. Prec. 547.

sd son if living, to sell the same advowson, and hold and apply the net proceeds thof in the same mner and upon the same trusts as if the sd advowson had been comprd in the devise of my residuary real este hinafter contd.

XVI. I DEVISE all, &c., To THE USE of —, his hrs and assigns, subjt to and charged with the paymt of a legacy of £——, to —, with interest thereon at the rate of — per cent. per annum from my death, and a legacy, &c. [*or*, “of an annuity of £—— during his life, to commence from my death, and to be payable, &c.” *see* “ANNUITIES,” p. 684, *form 1*, *or*, “subjt nevertheless to the paymt of the several annuities, or rentcharges, and legacies, and legacy duty hby charged upon and made payable out of the same hereds and premes, and to all powers and remedies for recovering and raising the same resply.”]

Devise
subject to
legacies or
annuities.

XVII. I DEVISE all, &c., To THE USE of — his hrs and assigns, subjt to and charged (in exoneration of my psonal este and my other real este, if any, charged thwith), with the paymt of all principal monies and interest specifically charged thereon by any mtge or mtges, and any other charges and incumbrances affecting the same at my death.

Devise
subject
to mort-
gage (a).

XVIII. AND I DECLARE that all sums specifically charged on the — estes, or any pt thof at my death, shall as between the psons taking the same estes under this my will, and the psons interested in my psonal este and my other real este under this my will, or any codicil hto, be considered as exclusively charged on the — este, in exoneration of my psonalty and other real este.

Declara-
tion that
specifically
devised
estates
shall be
taken sub-
ject to
charges.

XIX. I DEVISE all, &c., to the use of A. of, &c., his hrs and assigns, free and discharged from all the principal monies and interest charged thereon by an indre dated, &c., which I declare shall be paid out of my psonal este in exoneration of the sd hereds and premes.

Devise free
from mort-
gage debt.

(a) As to the primary liability to a mortgage debt charged on a devised estate, see 4 Dav. Prec. p. 249. The intention as to how a mortgage debt is to be borne should always be expressly stated, and not left to implication.

Devise to
uses of
settlement.

XX. I DEVISE all my freehd messuages, lands, and hereds situate in the parishes of — and —, in the county of —, unto the sd A. and B. and their hrs, To THE USES, upon the trusts, and with and subjt to the powers and provons decl'd and contd by and in an indre of settlem't dated, &c., and expd, &c., concerning the freehd hereds thby settled, or such of the same uses, trusts, powers, and provons as shall at the time of my death be subsisting or capable of taking effect, but not so as to increase or multiply charges or powers of charging.

Bequest
of rents
due to
testator
at his
death (b).

XXI. I BEQUEATH to — all rents and profits which shall be due or accruing due to me at the time of my death from or in respect of the estes and hereds situate, &c., hinbefore devised to the sd —, or, "of which I am tenant for life."

GIFTS OF RESIDUE.

Personalty
to bene-
ficiary.

I. I BEQUEATH all my personal este and effects whatsoever and wheresoever not otherwise disposed of by this my will, or any codicil hto, [except chattels real,] subjt to and after paymt of my funeral and testamentary expenses and debts, and the legacies and annuities bequeathed by this my will, or any codicil hto, and the legacy duty on any legacies or annuities bequeathed free of duty unto A., of, &c., his exs, ads, and assigns, for his and their absolute benefit, or, *for brevity*, "I bequeath all the residue of my personal este and effects to A., of, &c., absolutely."

Realty and
leaseholds
to bene-
ficiary.

II. I DEVISE all my manors, messuages, lands, tenemts, and hereds, of whatsoever tenure, and wheresoever situate,

(b) This bequest of arrears of rent and accruing rents to the specific devisee of the estate, or to the next remainderman where the testator is only tenant for life, is sometimes useful, as it saves the necessity for any apportionment of the rents.

or, "all my real and leasehd estes whatsoever and wheresoever," *or*, "all my real este, including chattels real," not otherwise disposed of by this my will, or any codicil hto, [charged in aid of my personal este with the paymt of my funeral and testamentary expenses and debts, and the legacies and annuities bequeathed by this my will, or any codicil hto, and the legacy duty on any legacies or annuities bequeathed free of duty] UNTO AND TO THE USE of A. of, &c., his hrs, exs, ads, and assigns resp'y, for his and their absolute benefit.

III. I DEVISE and bequeath all the residue of my personal este and effects whatsoever and wheresoever, and all my real este of every tenure and wheresoever situate, not otherwise disposed of, [charged in aid, &c., *as above, form II.*] UNTO AND TO THE USE of A. of, &c., his hrs, exs, ads, and assigns resp'y, for his and their absolute benefit [*or*, A. of, &c., and B. of, &c., and their respive hrs, exs, ads, and assigns, for their absolute benefit, in equal shares, as tenants in common].

Realty and
personalty
to bene-
ficiary.

IV. I DEVISE and bequeath all the residue of my este and effects, whether real or personal, UNTO AND TO THE USE of A. of, &c., his hrs, exs, and ads, absolutely.

The same.
Short form.

V. I BEQUEATH all my personal este and effects whatsoever and wheresoever [except chattels real and] except what I otherwise dispose of by this my will or any codicil hto (c) UNTO, *trustees*, their exs and ads, [upon the trusts and with and subj't to the powers and provons hinafter decl'd and cont'd concerning the same, that is to say,] UPON TRUST, &c.

Personalty
to trustees.

VI. I DEVISE all my manors, messuages, lands, tenemts, and herefd's, of whatsoever tenure and wheresoever situate, *or*, "all my real and leasehd estes whatsoever and wheresoever," *or*, "all my real este including chattels real," except what I otherwise dispose of by this my will or any codicil

Realty and
leaseholds
to trustees.

(c) This form is adapted to the case where the trusts provide for payment of the funeral, &c., expenses, debts, and legacies; otherwise insert here "subj't to and after paymt, &c.," as in form I.

hto, [charged in aid, &c., *as in form II.*] UNTO AND TO THE USE of, *trustees*, their hrs, exs, and ads resp'y, according to the tenure thof, [UPON THE TRUSTS, &c., *as in last form*].

Realty
where
copyholds
are to be
soid (d).

VII. I DEVISE all my estes and hereds of copyhd or customary tenure [except what I otherwise dispose of by this my will or any codicil hto] to such uses, upon such trusts, and with and subj't to such powers and provons as, *trustees*, or the survors or survivor of them, or other the trees or tree for the time being of this my will (hinafter called my trees) shall by deed appoint for the ppose of carrying into effect any sale or sales in psuance of the trust hinafter contd; AND I DEVISE all my real este of every tenure, including chattels real [except what I otherwise dispose of by this my will or any codicil hto], but as to copyhd or customary hereds in default of and subj't to any appointmt under the power hinbefore contd UNTO AND TO THE USE, &c., *as in preceding form*.

Realty and
personalty
to trustees.

VIII. I DEVISE and bequeath all my real este of every tenure, and all my personal este and effects whatsoever and wheresoever, not otherwise disposed of by this my will or any codicil hto (e) UNTO AND TO THE USE OF, *trustees*, their hrs, exs, and ads resp'y, according to the nature thof, [upon the trusts and with and subj't to the powers and provons hinafter decld and contd concerning the same, that is to say,] UPON TRUST, &c.

(d) This form should be used where the testator has copyholds which are to be sold, the object being to enable the trustees to convey by appointment to the purchaser without being admitted, so as to save the fine on their admittance. See Vol. I., p. 471, note.

(e) If the trusts do not provide for the payment of the funeral, &c., expenses, debts, and legacies, insert here, "subj't to and after paymt out of my personal este, [or in case of deficiency thof, out of my real este,] of my funeral and testamentary expenses, &c.," as in form 1.

CONVERSION AND INVESTMENT.

I. UPON TRUST that [(f) the sd, *trustees*, or the survivors or survivor of them, or the exs or ads of such survivor, or other the trees or tree for the time being of this my will, hereinafter called] my trees, shall sell [call in, collect], and convert into money the sd [real and personal este and] Trust for sale and conversion of realty, leaseholds, or personality (g).

(f) The words in this bracket will be omitted if the phrase, "my trees," has already been defined. As to the propriety of the words "exs or ads," and not "hrs," in the case of real estate, see p. 482, note (h).

(g) For a power to sell the surface and minerals separately where the property contains minerals, see p. 606, form LVIII.; for a power to sell for fee farm rents, see p. 465; for a special provision where the trust estate comprises an undivided share, see p. 471; for a power to partition in the like case, see *infra*, POWERS of TRUSTEES. As to the effect of the Settled Land Act, 1882, where there is a trust for sale, and a tenant for life, or limited owner, of the proceeds of sale and the rents and profits till sale, especially as regards the necessity for his concurrence in sales, &c., by the trustees, see p. 463, note, the remarks in which are equally applicable to trusts for sale under wills. The effect of the Act (s. 63) as regards the cases commonly arising under wills devising real or leasehold property in trust for sale, appears to be that where the whole or any share of the proceeds of sale is settled, so as to create a tenancy for life or limited ownership, the land is settled land within the Act, and the statutory powers of sale, leasing, &c., are exercisable by the tenant for life or limited owner alone, or (if the proceeds of sale are divided into shares) in conjunction with the persons beneficially entitled in possession (whether for a limited or absolute interest) to the other shares; the statutory powers in the case of infants being exercisable by the trustees on their behalf; and that the express trust for sale cannot (by s. 56) be executed without the concurrence of the donee or donees of the statutory powers; but that where no part of the proceeds of sale is settled, the Act has no application.

It has been held, on the construction of s. 63, that in determining whether the land, or any share thereof, is settled within the Act, the original instrument creating the trust for sale is alone to be regarded, and that where under that instrument the proceeds of sale would have vested absolutely, a sub-settlement of such proceeds, or any share thereof, does not bring the case within the Act; *In re Earle*, Weekly Notes, 1883, 129; but this decision seems questionable.

It is a question whether in the case of a trust, or power of sale, for payment of debts, the tenant for life of the proceeds, subject to the debts, would be a tenant for life within the Act, and whether consequently his consent to a sale of the proceeds, subject to the debts, would be necessary for the sale for payment of debts.

premes at such time or times and in such manner as they shall think fit [but as to reversionary ppty not until it falls into possession, unless it shall appear to my trees that an earlier sale would be beneficial], and so that they shall have the fullest power and discretion to postpone the sale calling in or conversion of the whole or any pt or pts of the sd premes [including leasehds or other ppty of a terminable or wearing out nature] during such period as they shall think proper, without being responsible for loss.

Details of
trust for
sale (a).

II. AND I declare that my trees may sell the sd real and personal este and premes hinfere devised and bequeathed in trust for sale subjt to any prior charges affecting the same or not, and either togr or in parcels, and either by public auction or private contract, and upon such terms and subjt to such condons and in such manner in all respects as they shall think fit, with power to buy in or rescind or vary any contract for sale, and to resell without being responsible for loss, and for the pposes afsd to execute and do all such assurances and things as they shall think fit.

Power to
trustees
to sell
real and
leasehold
estate (b).

III. I AUTHORISE my trees at any time or times [with the consent of any pson or psons whose consent may be necessary in that behalf under any law for the time being in force] to sell the whole or any pt or pts of my residuary,

by the trustees or executors under the trust or power would be necessary; whether there are in fact any debts or not. Where recourse to the real estate for payment of debts is likely to be necessary, it would generally be desirable to insert a power to raise money by mortgage for the purpose (see the form, p. 703), which would be exerciseable without the concurrence of the beneficiaries.

As to
inserting
express
powers of
leasing,
&c., where
there is a
trust for
sale.

In wills containing a trust for sale and conversion and for division of the proceeds into shares, the powers of leasing as well as other necessary powers are usually vested in the trustees; and it will probably still in general be expedient, notwithstanding the Settled Land Act, to give express powers to the trustees, which may be done by a short clause referring to the Act.

(a) This clause may be omitted in reliance on the Conv. Act, 1881, s. 35. See p. 464, note (I).

(b) This form is adapted to a will containing a residuary devise in trust without any trust for conversion, but not to real estate specifically devised. If the case is within the Settled Land Act, 1882, the power must of course be subject to the statutory provisions as to the consent of the tenant for life being

real and leasehd estes and hereds [*or, my real and residuary personal este,*] [*either subjt to any prior charge affecting the same premes or not, and either togr, &c., as in form II.*] And I declare that my trees shall stand possessed of the net proceeds of any such sale, after paymt of the expenses thof [upon the trusts and with and subjt to the powers 'and provons hinbefore decl'd and contd of and concerning the net proceeds of the sale of my residuary personal este], [*or, if the personal estate is included in the present power of sale, upon trust [with the like consent, or] at the like discretion to invest the same in the names [or under the legal control] of my trees in or upon, &c., investments, see "SETTLEMENTS PERSONAL," p. 435, form IV., V., or VI., with power [with the like consent, or] at the like discretion to vary or transpose such investmts into or for others of any nature hby authorised; And shall hold such net proceeds of sale (whether arising from real or personal este) and the investmts thof, Upon the trusts and with and subjt to the powers and provons hinbefore decl'd and contd of and concerning my residuary personal este,*] and so that the proceeds of the sale of my real este, and all investmts of such proceeds, shall, for the ppose of transmission as well as for all other pposes, be deemed personal este.

IV. I AUTHORISE my trees, at any time or times [*with the consent in writing of such of my children as shall then be living and of full age, or the majority in number of them, and if there shall be no such child*] at their discretion, to appropriate any pt of my este, whether real or personal, hinbefore devised and bequeathed to my trees in trust [*for conversion*], in its then actual condon or state of investmt

necessary (as indicated by the words in brackets), see p. 463, note; and also to the statutory provisions as to the reinvestment of the purchase-money, see p. 464, note. In this form the real estate when converted remains personalty. For forms of powers of sale providing for re-investment in land, see below, DEVISES IN STRICT SETTLEMENT. For other powers, see the references in p. 699, note (g).

Variations, where the power extends to personal estate.

Power to allot specific property in satisfaction of legacy or share of residue.

in or towards satisfson of any legacy or share in the sd trust premes, with power for that ppose conclusively to determine the value of the sd trust premes or any pt or pts thof in such mner as they shall think fit, [Provd also and I declare that any ppty appropriated under the power lastly hinbefore contd in satisfson of any legacy or share not absolutely vested in possion and immediately payable or transferable shall, notwithstanding such appropriation, remain subjt to the [trusts and] powers of sale and conversion and investmt and varying investmts and leasing and managemt [until sale] herein decl'd and contd concerning the sd trust premes hinbefore devised and bequeathed in trust as afsd, or such of the same trusts and powers as may be applicable thto, in the same mner as if no such appropriation had been made].

Power to partition testator's property instead of converting it.

V. I AUTHORISE my trees [with the consent of, &c., and if there shall be no such pson], at their discretion to make a partition of my net residuary este, real or personal, or any pt or pts thof, into shares, and to allot such shares in satisfson wholly or in pt of the several shares of the sd trust premes, with power for that ppose conclusively to determine, &c., *continue as in preceding form*.

Option to sons to purchase real or leasehold estate at a fixed price or valuation (d).

VI. I DECLARE that my sons —, —, and —, shall have the option in succession, according to their respive seniorities, of purchasing my — and hereds, situate, &c., at the price of £— [at a valuation to be made by a valuer appointed by my trees], such option to be decl'd in writing by my eldest son within six calendar months after my death, and by each of my other sons within one calendar month after the expiration of the period allowed to the son next preceding him in seniority, but so that my trees shall have power to extend the time so allowed to each or any of my sd sons in case they shall think it reasonable, and I direct my trees, on paymt of the pchase money for the same, to

(d) As to this clause, see 4 Dav. Prec. 260, note; and *Re Barnes*, W. N., 1883, 131.

assure the sd hereds and premes to the son purchasing the same, or as he shall direct, Provd always that after the sd premes shall have been so assured no pson claiming under such son shall be in any mner affected by any irregularity or want of compliance with the provons hinbefore contd respecting such successive options as afsd.

VII. I HEREBY AUTHORISE my sd son A., notwithstanding his being a tree of this my will, to pchase any pt or pts of my real or personal este hinbefore devised and bequeathed in trust as afsd, at any sale or sales thof by public auction, or by private contract, provd in the latter case the sale shall be conducted by, the trees or tree of my will, other than the sd A., or be made at a price fixed by a valuer appointed by such other trees or tree.

Power to son who is a trustee to purchase real or personal estate.

VIII. AND SHALL out of the monies to arise from the sale, calling in, and conversion of or forming pt of my sd [real and] personal este, pay my funeral and testamentary expenses and debts and legacies [and the legacy duty on any legacies or annuities bequeathed free of duty].

Trust of proceeds of conversion for payment of debts, legacies, &c.

IX. I AUTHORISE my trees to raise on mtge of any of the real or personal ppty hinbefore devised and bequeathed to them in trust as afsd all or any monies which may be required for the paymt of my funeral and testamentary expenses and debts and legacies, or for any of the pposes of this my will, but so that no mtgee advancing money on a mtge purporting to be made under this present power shall be concerned to see that such money is wanted, or that no more than is wanted is raised, and to secure the repaymt of any monies so raised as afsd with interest at such rate as may be thought proper by mtge in fee simple or for any term of years or otherwise of the ppty to be charged thwith, and either with or without a power of sale (e), and with such other powers and provons and upon such terms in all respects as my trees shall think fit; and I declare that if my trees shall raise more monies by any such mtge than may be required

Power to raise money on mortgage.

(e) As to this, see p. 101, note.

for the ppses afsd they shall hold the surplus upon the same trusts as if the same had arisen from a sale of pt of my residuary real and personal este.

Declara-
tion as to
income of
real and
personal
estate until
conversion
(f).

X. I DIRECT that all the net rents, profits, and income arising from my este, [real or personal], hinbefore directed to be sold, called in, and converted, in whatsoever condon or state of investmt the same may be and whether consisting of investmts of an authorised character or not [and whether of a permanent or a terminable or wearing out nature (g)] shall, until such sale, calling in, or conversion and, as well during the first year after my death as afterwards, be applied as if the same were income arising from the proceeds of the sale, calling in, or conversion thof, or the investmts of such proceeds, but that no reversion or other ppty not actually producing income shall be treated as producing income for the pposes of this my will, and that notwithstanding any postponemt of conversion of my real este hinbefore directed to be converted, the same shall for the ppose of transmission be considered as converted from the time of my death.

Special
declara-
tion as to
income of
property of
a wasting
nature (a).

XI. I DECLARE that all rents, profits, or income arising from or receivable in respect of any leasehds, or annuities or other ppty of a terminable or wearing out nature, whether real or personal, which shall for the time being constitute

Power to
postpone
conversion.

(f) Where the power to postpone conversion is not as in the forms in this collection incorporated in the trust for conversion, say, "I AUTHORISE my trees at their uncontrolled discretion to postpone, during such period as they shall think fit, the sale, calling in, and conversion of the whole or any pt or pts of my este, real or personal, hinbefore directed to be converted, but I direct that all the net rents, profits, and income arising from the same or any pt or pts thof until such sale, calling in, or conversion, shall as well, &c."

(g) This will be omitted if the next clause, providing more fully for this, is inserted.

(a) As to the doctrine in *Horne v. Lord Dartmouth*, to which this has reference, see 2 L. Cas. Eq.

pt of my residuary este, and be vested in possion, shall for all the pposes of my will, and as between all persons interested hereunder, as well during the first year after my death, as at all times afterwards, be considered and applied as pt of the annual income of my sd residuary este, no pt thof being liable to be retained as capital [and that all annuities, yearly rents, and other periodical paymts, payable out of my este, not being instalmts in repaymt of principal money, shall be pd or satisfied out of the annual rents, profits, or income of my sd residuary este].

XII. AND SHALL (b) at the discretion of my trees invest the residue of the sd monies [the sd sum of £——] in the names [or under the legal control (c)] of my trees in or upon, &c., *investments and power to vary, see "SETTLEMENTS PERSONAL," p. 435, form IV., v., or, VI., omitting if necessary the words, "with such consent or," in the power to vary, [or if an investment clause in another part of the will is referred to, say, "in or upon any stocks, funds, or secs hinbefore, or, "hinafter," authorised as investmts in the case of the sd legacy of £——, or, "my residuary este," (d)*

Trust for investment of residue or legacy.

(b) If the investment is to be with the consent of the beneficiaries, say, in the case of testator's widow, "with the consent in writing of my sd wife during her life [widowhood], and afterwards, at the discretion, &c.;" in the case of any other tenant for life, "with the consent in writing of the sd, *tenant for life*, during his [her] lifetime, and afterwards, at the discretion, &c.;" in the case of successive tenants for life, "with the consent in writing of the sd, *tenants for life*, or the survivor of them, during their, his, or her, lifetime, and afterwards, &c.;" where there may be infants entitled in possession, "with the consent in writing of the pson or psons of full age, if any, for the time being entled to the income of the sd trust premes or any pt thof, and otherwise at the discretion, &c." Sometimes the provision as to consents is more conveniently inserted in a separate clause, as in form XVI., *infra*.

(c) These words to be inserted where any securities passing by delivery are authorised. For a form prohibiting securities of this nature, see p. 437.

(d) The following is sometimes added, "or in or upon any stocks,

and may [with such consent or] at such discretion as aforesaid vary or transpose such investments into or for others of any nature hereby authorised"].

Direction for investment of a legacy or share given to an infant or settled.

XIII. PROVID ALWAYS, and I direct that my trees shall invest the legacy, or, "share of my residuary estate," or, "of the said trust premises," hereinbefore bequeathed to or in trust for the said — [with his consent in writing during his life if of full age, and at any other time] at the discretion of my trees in the names, &c., as in last form.

General direction for investment of all legacies or shares settled or given to infants.

XIV. PROVID ALWAYS, and I direct that my trees shall invest every legacy, or, "share of my residuary estate," or, "of the said trust premises," which shall not be absolutely vested in possession and immediately payable or transferable [with the consent in writing of the person of full age (if any) for the time being entitled to the income thereof, and in case there shall be no such person] at the discretion, &c., in the names, &c., as in form XII.

General power of investment.

XV. I AUTHORISE my trees to invest any monies forming part of the trust estate under this my will which may at any time be in their hands and requiring investment, in their names [or under their legal control], and at their discretion in or upon, &c., investments and power to vary, see "*Settlements Personal*," p. 435, form IV., v., or VI., omitting the words, "with such consent, or," in the power to vary.

Consent to investments.

XVI. PROVID ALWAYS, and I declare that during the lifetime of my said wife no sale or investment or transposition of investment of any part of the said trust estate and premises in which she shall for the time being be interested, shall be made without her consent in writing, and that after the death of my said wife, no sale or investment or transposition of investment of any part of the said trust estate and premises which shall have been appropriated in or towards satisfaction, or as part of the share of

funds, shares, or securities of a description similar to those in which any part of my personal estate may be invested at the time of my decease." For a power to lend on a second or contributory mortgage, and a power to deposit securities for safe custody, &c., see p. 437.

any of my sd daughters in the sd trust este and premes shall be made without the consent in writing of such daughter, if living and of full age.

XVII. I AUTHORISE my trees at any time to lend to the sd ^{Power to} K. for the pposes of the sd business any sum or sums of ^{lend trust} money not exceeding in the whole the sum of £—— out of ^{funds to} the trust premes, for such period as they may think proper. ^{son for} *Add any of the provisions at p. 671, form VI., which may be* ^{business} *appropriate [If K. is a trustee add, PROVD ALWAYS that my* ^{purposes.} *trees other than the sd K. may call in and compel paymt of* *the sd loan, as and when the same shall become payable,* *but without being in anywise responsible for loss occasioned* *by any omission or neglect so to do].*

GENERAL POWERS OF APPOINTMENT.

I. IN TRUST for such pson or psons (e), for such pposes, ^{General} and in such mner as the sd, *donee*, shall from time to time ^{power of} [by any deed or deeds revocable or irrevocable or] by will ^{appoint-} or codicil appoint; AND IN DEFAULT of and subjt to any such ^{ment to} appointmt, IN TRUST, &c. ^{one.}

II. IN TRUST, &c., *as above*, as the sd, *donees*, shall from ^{The same} time to time by any deed or deeds revocable or irrevocable ^{to two and} jointly appoint, and in default of and subjt to any such ^{the sur-} appointmt, then as the survivor of them the sd, *donees*, ^{vivor.} shall, after the decease of the one of them first dying, from time to time in like mner or by will or codicil appoint; AND IN DEFAULT of and subjt to any appointmt under the respive powers hinbefore contd, IN TRUST, &c.

(e) For real estate, insert here, "for such este or estes, interest or interests, subjt to such powers and provons:" and if the limitations are legal, say, "to the use of," instead of "in trust for."

LIFE INTERESTS (*f*).

Life interest in person-
ality.
Variations for realty or a mixed fund of realty and person-
ality.

The same to woman without anticipa-
tion (*b*).

Life interest in remainder.

Life interest de-
terminable

I. AND SHALL pay the income of the sd sum of £——, *or*, “share,” and the investmts representing the same, *or*, “the sd trust premes constituting or representing my residuary este,” *or*, “my sd residuary trust este (*g*),” to the sd — [or permit or empower him [her] to receive the same] during his [her] life [widowhood] (*a*).

II. AND SHALL pay, &c., *as above*, to — during her life, and so that during [her present or any future] coverture she shall not have power to anticipate the same, *or*, “without power of anticipation.”

III. AND AFTER the death of the sd — [death or marre of my sd wife, *or as the case may be*] shall pay the income (*g*) of the same trust premes, *or as the case may be*, to —, if surviving during his [her] life [*for restraint on anticipation see last form*].

IV. UPON TRUST, that if at the time of my death [*or, if the life interest is in remainder*, at the time of this present trust

(*f*) The forms under this and the next three headings are adapted only to real and personal estate held in trust. For legal limitations of real estate, see SPECIFIC DEVICES, and DEVICES IN STRICT SETTLEMENT.

Variations for real estate.

(*g*) For real estate not directed to be converted, say, “net rents and profits of the sd hereds and premes [after paymt of all outgoings and expenses, which may be payable, or which my trees may think fit to pay thereout, and the interest on any principal sums, and any annual sums charged thereon]”. For a mixed fund of realty and personalty, say, “net rents, profits, interest, dividends, and annual produce [*or*, rents, profits, and income] of the sd real and personal este and premes [after paymt, &c., *as above*].”

(*a*) As to the validity of gifts during widowhood, and generally as to gifts operating in restraint of marriage; see 4 Dav. Prec. 38, note; Elph. Introd. Conv. 437.

(*b*) See p. 439, note.

taking effect in possession], the sd K. would not, by reason of any antecedent bankruptcy, or alienation or charge, or attempted alienation or charge, or the happening of any other event, whether before or after my decease, be wholly or partially prevented from personally enjoying the life interest hereby given to him in the sd trust premises, if the same were given to him absolutely, then my trustees shall pay the income of the sd trust premises (e) unto the sd K. during his life or until he shall become bankrupt, or shall alienate or charge or affect to alienate or charge the sd income or some part thereof, or until some other event shall happen whereby, if the said income or any part thereof belonged to him absolutely, he would be wholly or partially deprived of the personal enjoyment thereof.

V. AND SHALL pay the income (e) of the sd trust premises to the sd K. during his life, unless and until some event shall have happened or shall happen, whereby, if the sd income belonged absolutely to him, he would be deprived of the personal enjoyment thereof or of any part thereof.

VI. AND, in the event of the trust hereinbefore continued for payment of the sd income to the sd K. determining or failing in his lifetime, my trustees shall during the remainder of his life, or during such shorter period continuous or discontinuous as they shall in their absolute discretion think fit, pay all or any part of such income or apply the same for the maintenance and personal support or benefit of all or any one or more to the exclusion of the others or other of the following objects, namely, the sd K., and his wife (if any), and his children or remoter issue for the time being in existence whether minors or adults, and the other persons or person for the time being entitled to or interested, whether absolutely, contingently, or otherwise, in the sd trust premises, or any

(d) As to trusts of this nature, see p. 441, note; 442, note (e).

(e) For the variations for real estate, or a mixed fund of realty and personalty, see last page, note (g), and make corresponding alterations throughout the form.

(f) See p. 441, note; p. 442, note (e).

pt thof, under the trusts herein contd to take effect after the decease of the sd K., in such proportions and mner as my trees shall in their absolute and uncontrolled discretion from time to time think proper, and subjt to the discretionary power lastly hinbefore contd, shall, during such remainder of the life of the sd K. hold the sd income or so much thof as shall not be applied under such discretionary power, Upon the trusts and for the pposes upon and for which the sd income would for the time being be held if the sd K. were then dead.

The same.
Short form.

VII. AND IN the event of the failure or determination during the life of the sd K. of the trust lastly hinbefore decl'd in his favour shall, during the remainder of his life, pay or apply all or any pt of the sd income unto or for the personal support or benefit of the sd K. and his wife and issue (if any) for the time being in existence, and the psons or pson for the time being interested in the sd trust premes under the ulterior trusts hinafter decl'd, or any of such respive objects of the present discretionary trust to the exclusion of the others or other of them, in such shares and mner as my trees shall from time to time in their absolute discretion think proper, and subjt to such discretionary trust or power shall hold the sd income upon the trusts upon which the same would for the time being be held if the sd K. were then dead.

Trusts of
income
after bank-
ruptcy,
&c., where
the life
interest
is not
protected.

VIII. AND AFTER the failure or determination during the life of the sd K. of the trust hinbefore decl'd of the sd income in his favour shall during the remainder of his life hold the sd income upon the trusts and for the pposes upon and for which the same would for the time be held if he were dead.

Proviso de-
termining
all tenan-
cies for
life on
bank-
ruptcy, &c.

IX. PROVD ALWAYS, and I declare that in case any pson to whom a life interest in the sd trust premes is hinbefore given shall at any time alienate or charge, or affect to alienate or charge, the income of the sd trust premes or any pt thof, or in case by reason of his [or her] bankruptcy or any other event (whether happening before or after such life

interest shall come into possession or before or after my decease), the sd income or any pt thof shall or but for this proviso would belong to or become vested in some other person or persons, then the trust hereinbefore continued for payment of the sd income to such person shall immediately thereupon cease and become void; *if the life estate is not to be protected say*, "and my trustees shall during the remainder of his [or her] life hold the sd income upon the trusts and for the purposes upon and for which the same would for the time being be held if he [or she] were dead;" *if the life interest is to be protected say* "And in such event my trustees may during the remainder of his life, &c., *discretionary trust for application of income for benefit of life tenant and his family, &c., as in form VI.*"

X. AND SHALL pay the income (a) of the sd trust premises to my sd wife during her life, and so that during any future coverture she shall not have power to anticipate the same, subject to the obligation of maintaining and educating throughout such of my children as shall for the time being be minors and shall not have been married [and maintaining such of my daughters as shall for the time being be adult and spinsters], but without liability to account so long as she shall maintain and educate them respectively to the satisfaction of my trustees.

Life interest to widow charged with maintenance of children (g).

XI. AND I request my sd wife, but not so as to impose any legal obligation upon her, to maintain and educate such of my children as shall for the time being be minors and unmarried, and to make proper annual or other allowances to such of my children as shall for the time being have attained the age of twenty-one years and shall in her opinion require the same.

Precatory direction to maintain children.

XII. AND SHALL pay the [net rents, profits, and] income of the sd trust premises to —, —, and — and the survivors of them during their respective lives in equal shares as tenants in common, and, subject thereto, shall stand [seised and]

Tenancy in common to several for life, with trust of capital for last survivor

(g) See p. 444, form XXIII. for the full form, which can readily be adapted to this case.

(a) For variations for real estate or a mixed fund, see above, p. 708, note (g).

possessed of the sd trust premises in trust for the last survivor of them the sd —, —, and — and the [irs] as is and assigns of such last survivor absolutely.

TRUSTS FOR CHILDREN AND ISSUE.

Trust for
testator's
children or
issue as
widow shall
appoint.

L IN TRUST for all or such one or more exclusively of the others or other, of my children. [if remoter issue and remoter issue to be born and take vested interests within twenty-one years after the death of my sd wife]. At such age or time, or respective ages or times, if more than one in such shares and with such executory and other trusts for their respective benefit and such provisions for their respective advancement, either after the death or in the lifetime of my sd wife, and maintenance and education at the discretion of my executors or any other person or persons, and in such manner in all respects as my sd wife shall from time to time by any deed or deeds, revocable or irrevocable, or by will or codicil appoint, and is hereby released and subjected to any such appointment as aforesaid.

See p. 445, note (c).

For an estate and more, "for such estates or estate, interests or

in the trust of the power of appointment, see pp. 445, 446, notes (c) and (d) and taking an estate, see above, form XXII.

The widow's life interest is determinable on her marrying again, and is always, that in the event of my sd wife marrying again, the power lastly hereinbefore contained shall nevertheless remain exercisable, but without prejudice to the exercise thereof by deed." There might be a question as to whether there has been a previous revocable appointment, and if so, the power of appointment is to continue, the following is a form of deed, see above, p. 509, note (d):—

II. IN TRUST for all, or such one or more exclusively of the others or other, of the children [or remoter issue] of the sd —, [such remoter issue to be born and take vested interests within twenty-one years after his death [the death of the survivor of the sd — and —]] (f), at such age or time, or respive ages or times, if more than one in such shares, and with such executory and other trusts for their benefit and such provons for their respive advancemt, either after the death or in the lifetime of the sd — [and —], and maintenance and education, at the discretion of my trees or any other pson or psons, and in such mner in all respects as the sd — shall from time to time by any [deed or deeds, revocable or irrevocable, or by will or codicil appoint, AND IN DEFAULT of and subjt to any such appointmt, &c., [or, as the sd — and — shall from time to time by any deed or deeds, revocable or irrevocable, jointly appoint, and in default of and subjt to any such appointmt as the survivor of them, the sd — and — shall from time to time after the decease of the one first dying in like mner, or by will or codicil appoint, AND IN DEFAULT of and subjt to any appointmt under the respive powers lastly hinbefore contd, &c.].

Trust for children or issue of tenant for life as he shall appoint. Variations where the power is given to two tenants for life and the survivor (g).

III. IN TRUST for all, or any, to the exclusion of the others or other, of my children or remoter issue, [the children or remoter issue of the sd —,] if more than one in such shares, and in such mner in all respects as my sd wife [as the sd —] shall by any deed or deeds, revocable or irre-

Trust for children or issue as widow or tenant for life shall appoint. Short form (g).

“PROVD ALWAYS that in the event of my sd wife marrying again the power lastly hinbefore contd shall not be exercised by her after such marre so as to diminish the share to which any child of mine shall at the date of such appointmt have become entled in possion in default of appointmt.” Compare form XXVII., p. 446.

Proviso where wife's life interest is determinable on her marrying again.

(f) See note (c) last page.

(g) For additions to this power where the interest of the tenant for life is determinable on bankruptcy, &c., see pp. 446, 509.

vocable, or by will or codicil appoint, AND IN DEFAULT of and subj to any such appointmt, &c.

Trust for children of testator or another person at twenty-one, &c. (c).

IV. IN TRUST for all, or any, my children or child, [the children or child of the sd —,] who being a son or sons attain (a) the age of twenty-one years, or being a daughter or daughters attain that age or marry (b), if more than one in equal shares as tenants in common.

Trust for testator's children, sons at twenty-one, daughters at twenty-one, or marriage with consent (d).

V. IN TRUST for all, or any, my children or child, who, being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry with the consent, if marrying after my death, of her or their guardian or guardians (b), if more than one in equal shares as tenants in common.

Trust for testator's children at twenty-one, &c., so as to exclude daughters marrying under age without consent.

VI. IN TRUST for all, or any, my children or child, who, being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry in my lifetime, or attain that age after my death without having previously married, or marry after my death under that age with the consent of her or their guardian or guardians (b), if more than one in equal shares as tenants in common.

(a) This wording is suitable whether the children are all under age or unmarried, or some are already of age or married; but in the latter case, if thought preferable, say, "have attained or shall attain, &c.," and "have married or shall marry."

(b) For real estate add here, "their, his, or her hrs and assigns," for a mixed fund of real and personal estate, "their, his, or her hrs, exs, ads, and assigns, resply." The addition of these words, though common, is of course not essential, even in the case of real estate (see the Wills Act, s. 28).

(c) This form should not be used where the parent is living and does not take a life interest; see form VIII. below for that case. In the case of the testator's children, or those of another deceased person, the vesting may be postponed till any later age than twenty-one. For a trust for the children of another living person postponing the vesting till twenty-five as far as the law will permit, see p. 716, form x.

(d) Under a trust in this form a daughter, although marrying without consent, would, if she afterwards attains twenty-one, become entitled. If it is the intention that a daughter so marrying should be absolutely excluded, the next form should be used. As to the effect of marriage at a time when there is no guardian, see *Re Brown*, 18 Ch. D. 61.

VII. IN TRUST for all, or any, my children or child, [the children or child of the sd —,] (e), if more than one in equal shares as tenants in common.

VIII. IN TRUST for all, or any, the children or child of —, who shall be living at my decease, or born at any time afterwards before any one of such children for the time being in existence attains a vested interest, (g) and who, being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, (e) if more than one in equal shares as tenants in common.

IX. IN TRUST, if there shall be but one child of the sd —, for such one child (b): AND IF there shall be two or more children of the sd —, then IN TRUST for such two

Trust for children of testator or another person to vest immediately (f).

Immediate trust for children of another living person at twenty-one, &c.

Trust for children of tenant for life at twenty-

(e) See note (b) last page.

(f) This form is adapted to the case where the children are all adult, otherwise form iv. should be used. An immediate trust in this form for the children of another living person would include only those living at the death of the testator, provided there were any such children then in existence; but if the gift is in remainder, children born after the testator's death, and before the period of distribution, would share; see Hawkins on Wills, p. 68.

(g) A simple trust for all the children who attain twenty-one, &c. (where the parent takes no life interest), would include only those living at the testator's death or born afterwards and before any child attains a vested interest; but it is better to express this as in the text. The gift might be extended to all children born before the *youngest* child for the time being *in case* attains a vested interest, but this would prevent a child who has attained a vested interest from receiving his share until all the younger children have attained vested interests or the death of the parent. If it is desired to extend the gift to all children, the following words may be substituted, "who shall be living at my decease, or born at any time afterwards during the life of the sd — or after his decease." As in that case the fund will not be distributable till the death of the parent, provision should be made for the payment of the income in the meantime to the children who have attained vested interests, or their representatives, or for the benefit of the minor children. As to the right to the income in the absence of express provision, see *Scott v. Lord Scarborough*, 1 Beav. 154.

(b) For real estate, add here, "his or her hrs and assigns," for a mixed fund of realty and personalty, "his or her hrs, exs, ads, and assigns resp'y;" and make corresponding alterations in the rest of the form.

one, &c.,
effected by
means of
survivor-
ship and
accruer
clause (c).

or more children in equal shares as tenants in common: PROVD ALWAYS, and I hby declare that if there shall be more than one child of the sd —, and any of them being a son or sons shall die under the age of twenty-one years, or being a daughter or daughters shall die under that age and without having been married, then as well the original share intd to be hby provd for as the share or shares by virtue of this present clause or proviso accruing to each such son or daughter so dying as afsd, [or so much thof as shall not have been applied or disposed of for the advancemt of any such child under the power for that ppose hinafter contd,] shall from time to time go, accrue, and belong to the others or other of such children, and so far as circes will admit shall vest in them, him, or her, if more than one in equal shares as tenants in common, at such and the same time or times and in such and the same mner as is hinbefore provd concerning their, his, or her original shares or share: PROVD ALSO, and I further declare that if there shall be no child of the sd —, or if there shall be one or more such child or children, but such child if only one, or all such children if more than one, shall, being a son or sons die under the age of twenty-one years, or shall being a daughter or daughters die under that age and without having been married, then my trees shall hold the same trust premes, or so much thof as shall not have been applied or disposed of for the advancemt of any such child or children under the afsd power, IN TRUST, &c.

Trust for
children of
another
living per-
son post-
poning the
vesting to
twenty-
five.

X. IN TRUST for all, or any, the children or child of the sd — who shall be living at my death, or born at any time afterwards, and who being a son or sons, attain the age of twenty-five years, or survive the survor of me and the sd — for the period of twenty-one years (d), or being a

(c) This form of trust is now seldom used, being superseded in practice by form IV. above, but it may occasionally be found useful.

(d) As this gift is extended to children born after the testator's death, these words are added in order to keep within the rule against perpetuities. If the parent does not take a life interest this trust may be restricted, as in form VIII,

daughter or daughters, attain the age of twenty-five years, or marry, or survive the survivor of me and the sd — for the period of twenty-one years (e), if more than one in equal shares as tenants in common.

XI. PROVID ALWAYS, and I declare that if any grandson of mine shall or would if living, attain the age of twenty-five years before the expiration of twenty-one years, computed from the time of the decease of the survivor of my children and more remote issue (if any) living at my death, then the vesting of the share of each such grandson in the sd trust premises shall be postponed until the attainment by such grandson of the age of twenty-five years.

Clause postponing vesting of grandsons' shares to the age of twenty-five if not too remote (f).

XII. IN TRUST for all or any, my children or child, who shall be living at my decease, and being a son or sons attain the age of twenty-one years, or die under that age leaving issue, or being a daughter or daughters attain that age or

Trust for children of testator at twenty-one, &c., including

to children born before any child (or if preferred before the youngest child for the time being *in case*) attains a vested interest. For variations for real estate or a mixed fund, see above, p. 714, note (b).

(e) See the last note.

(f) See note (d), last page. In cases where the vesting of the shares of the children of any person other than the testator is postponed till after the age of twenty-one, it may sometimes be convenient to define the terms "majority," and "minority," &c., as in the following form, and to use the phrase, "children or child attaining majority," instead of "children or child who being a son, &c."

"I DECLARE that the expression, 'majority,' as used in this my will, when applied to a male born in my lifetime shall mean his attaining the age of twenty-five years, and when applied to a male born after my death shall mean his attaining the age of twenty-one years, and when applied to a female born in my lifetime shall mean her attaining the age of twenty-five years or marriage, and when applied to a female born after my death shall mean her attaining the age of twenty-one years or marriage. And that the expressions 'minority' and 'minor,' as used in this my will, shall have a meaning corresponding to the expression 'majority.'"

Special definition of majority and minority.

those dying
in testa-
tor's life-
time leav-
ing issue
(a).

marry, and any child or children of mine who may have died in my lifetime (whether before or after the date of this my will) leaving issue living at my death, (g) if more than one in equal shares as tenants in common, and so that the share hby expd to be given to any such deceased child as afsd shall vest in his or her representatives as pt of his or her personal este in the same mner as the same would have done if he or she had survived me and died immediately after me, having attained a vested interest.

The same
for chil-
dren of
another
person (b).

XIII. IN TRUST for all, or any, the children or child of the sd —, who shall be living at my decease or born after

(g) For real estate, add here, "their, his, or her hrs and assigns," and afterwards say, "shall devolve upon and vest in his or her hrs or devisees as pt of his or her real este." For a mixed fund of real and personal estate, add here, "their, his, or her hrs, exs, ads, and assigns, resply," and afterwards say, "shall devolve upon and vest in his or her hrs, devisees, exs or ads, resply as pt of his or her real and personal este."

Mode of
providing
for a child
predeceas-
ing the
testator
leaving
issue.

(a) This form operates according to the 33rd section of the Wills Act in making the share of a child dying before the testator leaving issue part of his or her estate. Without this express provision such a child would be excluded, as the gift being to a class would vest in those only who survive the testator (*Olney v. Bates*, 3 Drew. 319; *Broune v. Hammond*, Johns. 210). The words declaratory of the intention that the share of a deceased child shall go to his or her representatives should be inserted, though they appear to be unnecessary having regard to the Wills Act. The vesting in this case may of course be postponed to any later age than twenty-one, see above, p. 714, note (c); but in that case it may be proper that such restriction should not apply to deceased children. As the effect of the clause in the text is to make the share of a deceased child part of his estate so as to be subject to his debts (see p. 675, note), and so as possibly in the case of a daughter to carry her share to her husband, it may be better to provide for this case by giving the share of a deceased child to the issue as in form XVII. It is also generally better and more convenient to provide for the event of a child predeceasing the testator leaving issue, by a separate clause, as in forms XV. and XX. It may be added that the numerous reported instances of miscarriage on the part of testators in the endeavour to provide for the issue of children predeceasing them (in many of which the adherence to the strict letter of the will or the application of technical rules of construction has defeated the evident and plainly expressed intention of the testator) renders some care on the part of the draftsman necessary in framing such dispositions.

(b) As to the necessity for an express gift in this case of the share of a

wards and being a son or sons, attain the age of twenty-one years or die under that age leaving issue, or being a daughter or daughters attain that age or marry, and any child or children of the sd — who may have died in my lifetime, &c., as in last form.

XIV. IN TRUST for all, or any, the children or child of the sd —, who shall be living at my decease, or born at any time afterwards, and who being a son or sons attain the age of twenty-five years, or survive the survivor of me and the sd — for the period of twenty-one years, or die under the age of twenty-five years leaving issue, or being a daughter or daughters attain the age of twenty-five years or marry, or survive the survivor of me and the sd — for the period of twenty-one years, and any child or children of the sd — who may have died in my lifetime (whether before or after the date of this my will), leaving issue living at my decease, if more than one in equal shares as tenants in common, and so that the share hby expd to be given to any such deceased child as afsd, shall vest in his or her representatives, as pt of his or her personal este, in the same mner as if he or she had survived me and died immediately after me, having attained a vested interest as afsd.

Trust for children of another living person who attain twenty-five, &c., and those dying before the testator leaving issue (c).

XV. PROVID ALWAYS and I declare that if any child of mine [of the sd A.] shall have died in my lifetime (whether before or after the date of this my will), leaving issue living at my death, the share in the sd residuary este and trust premes which such child would have taken if he or she had survived me [and attained a vested interest] shall be held in trust for his or her personal representatives, as pt of his or her personal este.

Proviso giving share of child predeceasing testator to its representatives (d).

deceased child to his or her representatives so as to prevent lapse, the case not being within the 33rd section of the Wills Act, see *In re Coleman*, 4 Ch. D. 165. This form is not to be used where the parent is living but does not take a life interest. In that case the form should be modified as above, p. 715, form VIII.

(c) See the last note, and above, p. 716, note (d). For variations for real estate or a mixed fund, see last page, note (g).

(d) See last page, note.

Clause
against
lapse in
gift of
residue
real and
personal
(e).

XVI. [*General devise and bequest of real and personal estate to A.*] AND I DECLARE that in the event of the sd A. dying in my lifetime, whether leaving issue or not, the devise and bequest of my residuary real, and personal estate hitherto made in his favour shall not lapse, but that such residuary estate shall in that event devolve upon and vest in his heirs, executors, administrators, or devisees respectively, according to the nature of the property, as part of his real and personal estate respectively, in the same manner as if he had survived me and died immediately after me.

Trust for
testator's
children,
and children
of deceased
children,
at twenty-
one, &c.
(f).

XVII. IN TRUST for all, or any, my children or child living at my death, and the children or child then living of any then deceased child of mine, who being male attain the age of twenty-one years, (g) or being female attain that age or marry (a), if more than one in equal shares as tenants in common, but so that the children of any deceased child of mine shall take equally between them only the share which their parent would have taken had he or she survived me and attained a vested interest (b).

Immediate
trust for
children of
another
person and
children of
deceased
children,

XVIII. IN TRUST for all or any the children or child living at my death of —, and the children or child then living of any then deceased child of his, who being male attain the age of twenty-one years, (g) or being female attain that age or marry (a), if more than one in equal shares as tenants in common, but so that the children of any deceased child

(e) See p. 718, note. This clause differs from the last in providing against lapse whether the devisee leaves issue or not.

(f) See the form of a separate clause substituting issue of deceased children below, form XX. The vesting in this case both as to children and grandchildren can be postponed to a later age than twenty-one, as the objects must be *in esse* at the testator's death.

(g) If it be desired, for the sake of consistency, to prevent the exclusion of a son who survives the testator and afterwards dies under age, leaving issue, add here, "or die under that age, leaving issue."

(a) For variations for real estate or a mixed fund, see above, p. 714, note (b).

(b) This is the proper way of describing the share of a child dying before the testator. See *Hunter v. Cheshire*, L. R. 8 Ch. Ap. 751. The expression "the parents' share" is incorrect: see *Re Smith's Trusts*, 5 Ch. D. 497; *West v. Orr*, 8 Ch. D. 60.

of his shall take equally between them only the share which their parent would have taken had he or she survived me and attained a vested interest.

XIX. IN TRUST for all, or any, my children or child, [the children or child of the sd —,] living at the death of the survivor of myself and my sd wife [of the sd — and —] and the children or child then living of any then deceased child of mine [of the sd —] who being male attain the age of twenty-one years, (g) or being female attain that age or marry (h), if more than one in equal shares as tenants in common, but so that, &c., as in last form, *mutatis mutandis*.

Trust for children who survive tenant for life, and children of deceased children, at twenty-one, &c. (a).
(b).

XX. PROVID ALWAYS, and I declare that if any child of mine shall have died in my lifetime (whether before or after the date of this my will) leaving issue living at my death, such issue being male and attaining the age of twenty-one years, or being female and attaining that age or marrying, shall take by substitution, if more than one in equal shares as tenants in common, the share in the trust premes which such deceased child of mine would have taken under the trusts in that behalf hinbefore decl'd had he or she survived me and attained a vested interest (d), [but so that no issue remoter than a child of such deceased child shall take, except in the case of the death in my lifetime of his, her, or their parent, and in the place of such parent (e)].

Proviso substituting issue for child of testator predeceasing him (c).

XXI. PROVID ALWAYS, and I declare that if any child of the sd — shall have died in my lifetime, or in the lifetime of the sd —, leaving issue living at the death of the survivor of myself and the sd —, such issue being

Proviso substituting issue for child of tenant for life predeceasing him.

(g) See p. 720, note (g).

(h) See p. 720, note (a).

(a) For a proviso substituting issue, see form XX. The vesting can be postponed to a later age.

(b) It should be remembered that in the case of a trust for A. for life with remainder to any wife whom he may marry for life, a gift in remainder to the children of A. who may be living at the death of the survivor of him and his wife is too remote, as the wife may not be born till after the testator's death.

(c) This form can readily be adapted to the case of an immediate gift to the children of another person.

(d) See p. 720, note (b).

(e) The part here bracketed may generally be omitted.

male and attaining the age of twenty-one years, or being female and attaining that age or marrying, shall take by substitution if more than one in equal shares as tenants in common, the share in the sd trust premes which such deceased child of the sd — would have taken under the trusts in that behalf hinbefore decl'd had he or she survived me and the sd — and attained a vested interest [but no remoter issue than a child of such deceased child shall take, except in the case of the death of his, her, or their parent before the death of the survor of myself and the sd —, and in the place of such parent (e)].

Trust for
issue of
tenant for
life exclud-
ing eldest
child
taking
estate.

XXII. IN TRUST for all, or such one or more exclusively of the others or other, of the children or remoter issue of the sd, *tenant for life*, such remoter issue to be born and take vested interests within twenty-one years after the death of the survor of myself and the sd —, other than (f) and except the first or only son, or any other son or sons, who before his or their resply attaining the age of twenty-one years shall become [indefeasibly (g)] entled, or any daughter or daughters, who before her or their resply attaining that age or marrying shall become indefeasibly entled to the first este in tail [male or in tail], either in possion or remr, under an indre, dated, &c., or, "the will of, &c.," at such age or time, &c., as in form II.: AND IN DEFAULT of and subj't to any such appointmt in trust for all or any the children or child of the sd —, other than and except as afsd, who being a son &c., as in form IV.: And if there shall be no child, other than and except as afsd, of the sd —, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then in trust for such one or more of the sd excepted (h) children of the sd —, as being a son or sons attain, &c., as in form IV.

(e) The part here bracketed may generally be omitted.

(f) For variations where a child succeeding to a peerage or baronetcy is to be excluded; and for a Scotch entail, see p. 447.

(g) See above, p. 447, note (b).

(h) When the son succeeding to a peerage, &c., is excluded, say, "ex-

XXIII. IN TRUST for all or any my children or child, who being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, and if more than one in equal shares as tenants in common, except that the eldest, or only, such son shall take a double share [or, except that each son shall take double the share of each daughter], [or, but so that the share of my son —, in case he attains the age of twenty-one years, shall not be less [more] than £—, exclusive of any accumulations which may be added thto during his minority].

Trust for children where a double share is given to the eldest son or every son, or a minimum or maximum sum is given to one son.

XXIV. UPON TRUST to pay or transfer the sum of £—, or stocks funds or secs of equivalent value, to my son — in case and when he attains the age of twenty-one years, and to pay or transfer the sum of £—, or stocks funds or secs of equivalent value to my daughter —, in case and when she attains that age or marries, and as to all the residue of the sd trust premes in trust, &c., *for all the children*, “including the sd — and —,” *at twenty-one, &c., form iv.*

Trust for children unequally.

XXV. PROVID ALWAYS, and I declare that no child of mine [of the sd —], who [or whose issue] shall take any pt of the sd trust premes under any appointmt by virtue of the power [either of the powers] hinfefore contd, shall in

Hotchpot clause (i).

cepted son or sons of the sd — as shall attain the age of twenty-one years, if more than one in equal shares as tenants in common.”

(i) Where the children of a child dying before the testator take his share by substitution say, “that no child of mine [of the sd —] who or whose issue, and that no grandchild of mine [of the sd —], who or whose parent shall take, &c.,” as in the text, “without bringing the share or shares or interest appointed to him or her or his or her parent or issue into hotchpot, &c.” Where the representatives of a child dying before the testator take his share by substitution say, “that if any child of mine [of the sd —] shall take, &c.,” “neither such child nor his or her representatives shall in default, &c.,” “interest appointed to such child into hotchpot, &c.”

default of appointmt to the contrary be entled to any share of the unappointed pt thof, without bringing the share or shares or interest appointed to him or her [or to his or her issue] into hotchpot, and accounting for the same accordingly.

Proviso
restrict-
ing total
amount of
shares of
daughters.

XXVI. PROVID ALWAYS that if any daughter of mine would but for this present provo become entled [either by virtue of any appointmt or appointmts under the power hinbefore contd, or in default of appointmt, or partly in one way and partly in the other], to any share or shares in the sd trust premes which [either alone or togr with the share or shares to which she shall become entled by virtue of any appointmt or appointmts under the powers contd in my marre settlemnt, dated, &c., or in default of appointmt, or partly in one way and partly in the other, in the ppty subjt to the trusts of such settlemnt,] shall exceed in value the sum of £——, then unless the contrary shall be directed in any appointmt under the power hinbefore contd, she shall not be entled to a larger share in my residuary este than the sum of £——, [or such smaller sum as shall togr with her share or shares in the ppty subjt to the trusts of the sd settlemnt make up the sd sum of £——] with interest on the sd sum of £——, [or such smaller sum as afsd,] at the rate of —— per cent. per annum, from the death of the survor of myself and my sd wife, [and the residue of her share or shares in the sd trust premes shall be applied and disposed of as if such daughter had died before me without leaving issue] (a).

Clause
directing
sums taken
under mar-
riage set-
tlement to
be brought
into hotch-
pot.

XXVII. PROVID ALWAYS and I declare that the share or shares (if any) of the trust funds or ppty comprd in or subjt to the trusts of an indre of settlemnt, dated, &c., made on my marre, to which any child of mine [or the issue of such child, or any of such issue,] shall become entled, whether under any appointmt by virtue of the power [either of the powers] therein contd, or in default of appointmt, shall (unless the contrary shall be decld by me in writing, or by my sd wife

(a) It should be provided in this case (as in form XXIII.), whether accumulations during minority are to go in increase of the total amount of the daughters' shares, or to accrue to the other children.

after my death by writing under seal) be brought into account in the way of hotchpot as against such child [or his or her issue] in the division of the sd trust premes representing my residuary este in the same mner as if the same formed pt of such residuary este, to the intent that in the general division of my este, and the trust ppty comprd in the sd settlemt, there shall be an equality between my children, [except that the shares of my sons shall be double those of my daughters as afsd], and I direct that any and every question whether as to values or otherwise which may arise respecting the mode of giving effect to the provon as to hotchpot hinbefore contd, shall be determined by my trees so as conclusively to bind all persons interested under this my will.

XXVIII. AND FOR THE PURPOSE of giving effect to the provons as to hotchpot and advancemt herein contd, the sd trust premes, or any pt or pts thof, or any interest therein which may be appointed as afsd, shall, as far as may be necessary, be valued (in default of any direction or provon in that behalf contd in any such appointmt as afsd), in such mner and at such respive times as my trees shall consider fair and proper, and such valuation shall be conclusive.

Addition to hotchpot and advancement clauses, providing for valuation of land, &c.

XXIX. PROVD ALWAYS and I declare that all sums of money or ppty which I have given, or covenanted or agrd to give, or which I may hereafter give, or covenant or agree to give, to or with any child of mine on his or her marre, or otherwise for his or her advancemt or establishmt in life, shall in default of any direction to the contrary in writing under my hand be taken in or towards satisfon of the share of such child [or his or her issue taking by substitution as afsd] in the sd trust premes, and shall be brought into hotchpot and accounted for accordingly.

Advances made to children by testator in his life-time to be brought into hotchpot (b).

XXX. PROVD ALWAYS and I declare that the sums, amounting to £—, which I have advanced by way of loan to my sd son A., and any other sum or sums which I may hereafter advance to him, or for his benefit, or so much thof as

Provision for debtor bringing advances into hotchpot when his share is settled (c).

(b) See Seton on Decrees, p. 942 *et seq.*

(c) See as to this, 4 Dav. Prec. p. 157, note, xli.

may be owing to me at my decease, and the interest thereon, shall not be charged or claimed as a debt owing to me from him or his representatives, but every such sum (whether legally constituting a debt or not), with interest thereon from my decease at the rate of — per cent. per annum (but not any interest thereon prior to my decease), shall be brought into account in the way of hotchpot in the division of my residuary este as against the sd A. and his wife and children, or other the pson or psons interested in his share of my residuary este under the trusts hinbefore decl'd.

SETTLEMENT OF CHILDREN'S SHARES. (d).

Commence-
ment of
trusts of
daughters'
or chil-
dren's
shares.

I. PROVID ALWAYS, and I declare that my trees shall retain the share in the sd residuary monies, or, "legacy," or, "trust premes," hinbefore given to each daughter [child] of mine (e), [if the share consists of money (f) say, "and shall at their discretion (g) invest such share in the names [or

(d) See above, p. 708, note (f).

(e) Where the trusts of each share are declared separately, say, "given to my daughter [son] K.," and make corresponding alterations in the remaining trusts.

(f) E.g. where there is a trust for conversion and an immediate trust of the proceeds for the children. In most cases, as where the widow takes a life interest, the trust for investment will precede the trust for division among the children.

(g) If it is desired that the investment should be with the consent of the beneficiary, say, "with the consent in writing of such daughter [child], if living and of full age, and at any other time at the discretion of my trees," or, "with the consent in writing of the pson for the time being beneficially entled for his or her life to the income of such share, if of full age, and if there shall be no such pson, at the discretion of my trees;" or if the trusts of each share are declared separately, "with the consent

under the legal control] of my trees in or upon, &c., *investments and power to vary*, p. 485, *form IV., v., or VI.*]

II. AND I DECLARE that my trees shall [after the decease of my sd wife] divide the sd residuary moneys, *or*, "legacy," *or*, "trust premes," into — equal shares, and shall hold such respive shares upon the trusts hinafter decl'd concerning the same respively, that is to say, as to one of such — shares, my trees shall, &c., *trust for investment, if necessary, and ulterior trusts*, and as to — others of such — shares, my trees shall, &c.

The same.
Another form.

III. AND SHALL, during the life of such daughter, pay the income (a) of her sd share to her (b), and so that during any coverture she shall not have power to anticipate the same.

First life interest to daughter without anticipation.

IV. AND SHALL, during the life of such child, pay the income (a) of his or her sd share to him or her, and so that any daughter of mine shall not, during coverture, have power to anticipate the same.

Life interest to child, whether son or daughter (c).

V. AND SHALL, after the death of such daughter [child], pay the income (a) of such share to any husband [wife or husband] whom she [he or she] may leave surviving during the life of such husband [wife or husband].

Second life interest to any husband or wife.

VI. AND SHALL, after the death of my sd daughter K., pay the income (d) of such share to her husband the sd L., if surviving during his life, [shall after the death of my sd son K., pay the income of such share to his wife the sd L., if surviving during her life, and so that she shall not have power during [her present or any future] coverture to dispose

Second life interest to present husband or wife.

in writing of the sd K., if living and of full age, and at any other time at the discretion of my trees."

(a) For real estate, say, "rents and profits," for a mixed fund of real and personal estate, say, "rents, profits, and income."

(b) If the daughter may be under age, provision for maintenance, and advancement, &c., should be made, unless as to maintenance the statutory power is relied on. See MAINTENANCE, p. 741, *et seq.*

(c) For forms for life interests determinable on bankruptcy, &c., or protected against creditors, &c., see pp. 708, *et seq.*

(d) See note (a).

of or charge such life interest either before or after the ~~same~~ shall have fallen into possession by way of anticipation].

Power of appointment among children or remoter issue of daughter or child (e).

VII. AND AFTER the death of such daughter [child], [if surviving husband and wife take life interests, say, "of such daughter and her surviving husband, if any," or, "of such child and his or her surviving wife or husband, if any,] shall hold such share and the future income thereof upon trust for all or such one or more exclusively of the others or other of the children [or remoter issue] of such daughter [child], &c., *continue power of appointment to daughter or child, or to both parents or survivor*, p. 713, *form II. or III. mutatis mutandis, with the variation in the note for real estate.*

Trust for children in default of appointment.

VIII. AND IN DEFAULT of, and subj't to any appointment under the power [either of the powers] hereinbefore cont'd, in trust for all or any the children or child of such daughter [child] of mine, who shall be living at my decease or born afterwards, and who being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry (f), and if more than one in equal shares as tenants in common.

Hotchpot clause (g).

IX. *Hotchpot*, p. 723, *form xxv., saying*, "child of such daughter [child] of mine, who or whose issue shall take any pt of the share of such daughter [child] of mine, under any appointment," &c., *and see the addition for real estate*, p. 449, *form xxxii., mutatis mutandis.*

Ultimate trust of settled share for testamentary appointees of child.

X. PROVID ALWAYS, and I declare that subj't to the trusts powers and provisos herein decl'd and cont'd [if the statutory power of maintenance is relied on add, "or by law vested in my trees,"] concerning the share of any such daughter [child] of mine as aforesaid, and to every or any exercise of any such powers,

(e) For additions to power where the interests of the tenants for life are determinable on bankruptcy, &c., see pp. 446, 509.

(f) For variations for real estate, or a mixed fund, see above, p. 714, note (b).

(g) For maintenance and accumulation clauses (if inserted), and advancement clause, adapted to this case, see pp. 741, 742, 745.

my trees shall hold such share and the income (*h*) thof, in trust for such pson or psons, for such pposes, and in such mner in all respects as such daughter [child] shall by will or codicil appoint.

XI. AND IN DEFAULT of and subjt to any such appointmt, IN TRUST for such pson or psons as would have been entled thto under the statutes for the distribution of the personal este of intestates at the death of such daughter, had she died possessed thof intestate and without having been married, such psons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes.

Trust in default of appointment for daughter's next of kin excluding a surviving husband (i).

XII. PROVD ALWAYS, and I declare that subjt to the trusts and powers herein decl'd and contd [or by law vested in my trees] concerning the share of any such daughter [child] of mine as afsd, and to every or any exercise of such powers, such share and any additional share or shares which may accrue or be added thto by virtue of this present provo and the income (*h*) thof resply, shall go and accrue by way of addition to the share or shares of my other children or child in the sd trust premes, if more than one in equal shares and proportions, and so that the share which shall so accrue and be added to the share of any daughter [child] of mine shall be held upon the trusts, and with and subjt to the powers and provons herein decl'd and contd concerning her [his or her] original share, or as near thto as circes will admit.

Accruer clause.

XIII. PROVD ALWAYS, and I declare that it shall be lawful for every daughter of mine [in case she shall have no child [or remoter issue] who shall attain a vested interest in her sd share] by deed, executed prior to and in contemplation of marre, or by will or codicil, to appoint unto or for the benefit of any husband who may survive her an interest for the term

Power to daughter to appoint life interest to her husband. Variation enabling her to associate

(*h*) For variations for real estate or a mixed fund, see above, p. 708, note (*g*).

(*i*) See also p. 737, form VII.

him with herself in the power of appointment in favour of children (a).

of his life, or any less interest, in the whole or any pt of such share, and subj to any condons or restrictions she may think fit, and that, in the event of any such appointmt being made, the interest so appointed unto or for the benefit of such surviving husband shall take effect in precedence of and priority over the trusts and provons hinbefore decl'd and contd concerning the share of such daughter to take effect after her death [and in default of any child [or remoter issue] of hers attaining a vested interest]. [AND I FURTHER empower any such daughter by deed executed before or after her marre, with the concurrence of her husband or intd husband, to modify the power of appointmt hinbefore given to such daughter over her sd share in favour of her children or remoter issue, by making the same exerciseable as to all or any pt of such share by such daughter and her husband jointly by deed revocable or irrevocable, and in default of and subj to any such joint appointmt by the survor of such daughter and her husband in like mner or by will or codicil].

Trusts of daughter's share of residue declared by reference to a share already settled (b).

XIV. AND I DECLARE that my trees shall hold another equal — share in the sd trust premes, and the income (c) thof upon the like trusts, and with and subj to the like powers and provons in favour of my daughter L. and her [husband and] issue [and next of kin], and otherwise [and with the like ultimate provon for accruer or addition to the other shares in the sd trust premes] as are hinbefore decl'd and contd concerning the share of the sd K. in the sd trust premes, and the income (c) thof, in the same mner in all respects as if such trusts, powers, and provons were herein repeated with the substitution of the name of the sd L. for the name of the sd K. [save and except, &c., *specify any variations in the trusts*].

(a) A general power to the trustees to vary the trusts declared by the will of a daughter's share on her marriage or otherwise, and to appoint other trustees of such share with her consent, is sometimes useful; compare form XV.

(b) See also the form XIX., below, p. 733, of a legacy to a daughter or son upon trusts declared by reference with variations.

(c) For variations for real estate or a mixed fund, see p. 708, note (g).

xv. **PROVD ALWAYS**, and I authorise my trees, in case they ^{Power to trustees to settle daughters' shares.} in their absolute discretion shall think fit, at any time during the life of any daughter of mine who shall marry after my death [and under the age of — years], and either in contemplation of or after her marre, to settle all or any pt of the share or shares in the sd trust premes hinbefore bequeathed to such daughter upon such trusts as my trees shall think fit for the benefit of such daughter and her husband, or intd husband, and any future husband, and any children or more remote issue of hers (whether by her then present or intd husband or any future husband), or for the benefit of any of such objects, and with such ulterior or ultimate trusts, [such trusts being for the benefit of some issue of mine or their respive husbands or wives, or all or any of the statutory next of kin of any such issue,] and with such other provons as my trees shall think fit, with liberty for my trees or any or either of them to act themselves or himself as the trees or tree of such settlemt, or to nominate any other psons or pson to act either alone or in conjunction with them or any or either of them as such trees or tree: And the paymt or transfer of the shares of my sd daughters, or any of them, in the sd trust premes, may be wholly or partially suspended by my trees accordingly during the whole lifetime of such respive daughters [or, until they shall resply attain the age of — years], or such less period as my trees may think fit, and the income of the respive shares or pts thof so retained shall be paid to such respive daughters after they shall resply have attained the age of twenty-one years or married, and become entled to such respive shares in possion, until such settlemt thof as afsd shall be executed, but without power to anticipate the same during coverture: Provided nevertheless that my trees shall be at liberty, at their absolute discretion, to pay or transfer the share or shares of any of my sd daughters, or any pt thof resply to her or them, in which case the power hinbefore given to my trees to settle the same shall cease as regards the share or shares or pt thof so paid or transferred.

Power to daughter to appoint part of the funds settled by the will on her second marriage (d).

XVI. PROVD ALWAYS, and I declare that if any daughter of mine shall survive her present or first husband and marry again, then and in such case it shall be lawful for her either before or after any subsequent marre, by any deed or deeds revocable or irrevocable, or by will or codicil, to appoint that any pt not exceeding one moiety of her share in the sd trust premes shall from and after her death be held in trust as to all or any pt of the income thof for her after-taken husband if he shall survive her during his life or any less period, and subject to any condons or restrictions which she may think fit, and subject to the interest if any so given to such after-taken husband, in trust for all or any of her children or remoter issue by any such subsequent marre, such remoter issue to be born and take vested interests in her lifetime or within twenty-one years after her death, at such ages or times, age or time, if more than one in such shares, and generally in such mner as such daughter of mine shall think fit: PROVD ALWAYS, that subjt and without prejudice to any such appointmt as last afsd the ppty comprd in any such appointmt shall be held upon such of the trusts and with and subjt to such of the powers and provons hinbefore deold and contd concerning the same as shall be subsisting or capable of taking effect.

Trusts of share of daughter dying in testator's lifetime leaving issue.

XVII. PROVD ALWAYS, and I declare that if any daughter of mine shall die in my lifetime leaving issue living at my death, then the share or shares, whether original or accruing in the sd trust premes, or, "legacy," hinbefore directed to be held upon trusts for her and her issue or otherwise in the event of her surviving me, and the income (c) thof shall be held upon and for the same trusts and pposes as if she had died immediately after my death so far as the same shall be capable of taking effect.

Trusts of share of son dying

XVIII. PROVD ALWAYS, and I declare that if any son of mine shall die in my lifetime leaving children living at my

(c) For variations for real estate or a mixed fund, see p. 708, note (g).

(d) Compare the forms at p. 481 *et seq.*

death, then the share or shares, whether original or accruing in the sd trust premes, *or*, "legacy," ^{in testator's lifetime leaving issue.} hinbefore bequeathed in trust for him in the event of his surviving me and the income (d) thof shall be held in trust for all or any his children or child, &c., *continue trust for children at twenty-one*, p. 714, *form iv.*; And if there shall be no such child, shall go and accrue by way of addition, *continue as in accruer clause*, p. 729, *form xii.*

XIX. I GIVE AND BEQUEATH the sum of £—— to my trees ^{Trusts of a legacy to a daughter or son by reference, with variations.} upon and for the like trusts and pposes, and with and subjt to the like powers and provons in favour of my daughter ——, and her [husband], children, [or remoter issue], [and next of kin] and otherwise, [*or*, my son ——, and his wife, children, &c.,] as are hinbefore decl'd of and concerning the sd sum of £—— in favour of my sd daughter —— and her [husband], children, [or remoter issue], [and next of kin] and otherwise [inclusive of a power to the sd —— to appoint a life interest to a surviving husband, and so that such power shall include her present husband, and not be confined to a future husband as the power of the sd —— is hinbefore confined, *or*, "and except that the husband of my sd daughter —— shall not take a life interest therein," and except that, *specify any other variations: or if the bequest is to a son, say* "a simple life interest being in the case of my sd son ——, substituted for the life interest hinbefore given to my sd daughter —— without power of anticipation"].

XX. I HBY BEQUEATH the sum of £—— to my trees ^{Trust for improvident son (c).} upon trust to invest the same at their discretion in their names [or under their legal control] in any of the investmts hin- after authorised in the case of my general este with power from time to time to vary such investmts at discretion, And upon further trust that my trees shall, in their absolute discretion from time to time during the life of my son A., or during such shorter period or periods either continuous or

(d) For variations for real estate or a mixed fund, see p. 708, note (g).

(e) See power to raise and pay an annual sum for the benefit of a spendthrift, p. 686, *form ix.*

spinster, under any of the trusts or dispositions contd in this my will, for or towards his or her maintenance, education, or benefit (d), and may either themselves so apply the same, or may pay the same to the parent or guardians or guardian of such pson for the ppose afsd, without seeing to the application thof; AND SHALL during the minority of any such pson being a male, and minority and spinsterhood of any such pson being a female, accumulate, &c., *continue accumulation clause as in form II., saying "share, portion, or legacy," and, "of the pson for the time being expectantly, contingently, presumptively, or absolutely entled thto."*

Maintenance and accumulation clauses. A very general form (e).

- V. I DECLARE that my trees may apply the whole or any pt at their discretion of any income, to which any minor shall, or, if of full age being a male, or of full age or married being a female, would for the time being be entled in possession under any of the trusts or dispositions herein contd, for or towards his or her maintenance, &c., *as in last form*; AND SHALL, during such minority, or minority and spinsterhood, as the case may be, accumulate the surplus, if any, of the same income (a), &c., *continue accumulation clause as in*

(d) See p. 742, note (b) .

(e) This form is of the most general application, and is adapted to a case where annuities are charged, and where the infant is tenant for life.

(a) In the case of an infant tenant for life, if it is desired that the accumulations should belong to him if he attains twenty-one, &c. (which would not be the case under the statutory provision, see p. 742, note), continue as follows:—

Variation for tenant for life.

"in the way of compound interest, by investing the same and the resulting income thof in any of the investmts hby authorised, and shall stand possessed of such accumulations and investmts upon the trusts following, that is to say, if the person during whose minority the same shall have been accumulated shall, being a male attain the age of twenty-one years, or being a female attain that age or marry, then in trust for such pson absolutely, but if such pson shall die under the age of twenty-one years, and (in the case of a female) without having been married, then upon trust to add the same to, and so that the same shall follow the destina-

the application thof: And shall during the period
 y-one years from my decease, if the sd A. shall so
 ve, accumulate the surplus if any of such income at
 und interest by investing the same and the resulting
 income thof in any of the investmts afsd by way of addition
 to the capital of such fund, and so as to be subjt to the same
 trusts as are hby decld concerning the same, and shall during
 the remr of the life of the sd A. in case he [she] shall survive
 the sd period of twenty-one years, pay or apply such surplus
 income (if any) to the pson or psons and for the pposes, to
 whom and for which the same would for the time being be
 payable or applicable if the sd A. were then dead: And after
 the decease of the sd A., and subjt to the trusts afsd, shall
 stand possessed of the sd sum of £——, and the investmts
 and accumulations thof, or so much thereof as shall not
 have been applied or disposed of under the trusts afsd IN
 TRUST, &c.

MISCELLANEOUS BENEFICIAL TRUSTS (f).

I. IN TRUST for all, or any, my brothers and sisters living Trust for
 at my death, and the children or child then living of any then brothers
 deceased brother or sister of mine, who, being male, attain and sisters
 the age of twenty-one years, or being female, attain that age of testator
 or marry (g), in equal shares as tenants in common, but so living at
 that the children of any deceased brother or sister, if more his death,
 than one, shall take equally between them only the share and chil-
 which their parent would have taken if surviving me and dren of
 attaining the age of twenty-one years. those dead.

(f) See above, p. 708, note (f).

(g) For real estate add here, "their, his, or her, hrs and as-
 signs;" for a mixed fund of real and personal estate, "their, his, or
 her hrs, exs, ads, and assigns, respdy."

Trust for
issue of
nephews
and nieces
living at
time of
distribu-
tion per
stirpes.

II. IN TRUST for all, or any, the children or child of my sd nephews and nieces living at the death of the survivor of my sd nephews and nieces (a), and the children or child then living of any then deceased child of any of my sd nephews or nieces, who, being male, attain the age of twenty-one years, or being female, attain that age or marry (b), if more than one, in equal shares as tenants in common, but so that the grandchildren of any nephew or niece shall take equally between them only the share which their parent would have taken had he or she been living and attained the age of twenty-one years.

Trust in
remainder
after
several
prior trusts
for named
persons, or
such of
them as
are living
at time of
distribu-
tion, and
the issue of
those dead,
per stirpes
(c).

III. IN TRUST for my brothers, *naming them*, and sisters, *naming them*, or such of my sd brothers and sisters as shall be living at the time of the failure or determination of the prior trusts *hinbefore* contd (d), and the issue then living and attaining the age of twenty-one years, or in the case of females marrying, of any of my sd brothers and sisters *hinbefore* named who may be then dead (b), in equal shares per stirpes as tenants in common.

General
form of
commence-
ment of
ultimate
trust.

IV. AND SUBJT to the trusts and powers *hinbefore* decld and contd or by law vested in my trees (e) and to every

(a) Where a trust for a class of persons living at the period of distribution follows after several prior trusts, it may be more convenient to adopt the next form.

(b) For real estate add here, "their, his, or her, hrs and assigns," for a mixed fund of real and personal estate "their, his, or her hrs, exs, ads and assigns, resply."

(c) Where the trust in remainder is (as in this form) in favour of those members of the class who are then living (which is not in general a desirable form of disposition), care must be taken not to postpone the vesting beyond limits allowed by the rule against perpetuities, namely, a life or lives in being at the testator's death, and twenty-one years afterwards, see p. 721, note (b).

(d) Or, "at the time when this present trust shall take effect in possession." But both this form and that in the text may be open to objection where the prior trusts may be liable to determine as to different parts of the property at different times.

(e) These words have reference to the maintenance clause in the Conv. Act, 1881, s. 43.

exercise of such powers, my trees still hold the sd trust premes and the income thof in trust, &c.

V. AND IN CASE of the failure or determination of all the trusts hinbefore decl'd and cont'd as to the whole or any pt of the sd trust premes or the income thof, my trees shall hold the sd trust premes and the income thof, or so much thof resply as to which the trusts shall so fail or determine, and subj't to any powers by law vested in my trees (e), *or*, "or so much thof resply as shall not become absolutely vested or be applied or disposed of under the trusts or powers herein cont'd or by law vested in my trees (e)," IN TRUST, &c.

The same.
Another form.

VI. AND IF there shall be no child of mine, *or*, "of the sd —," living at my death, or born afterwards, who, being a son attains the age of twenty-one years, or being a daughter attains that age or marries, then subj't to the trusts and powers hinbefore decl'd and cont'd or by law vested in my trees (e), and to every exercise of such powers, my trees shall hold the sd trust premes and the income (f) thof IN TRUST, &c.

Ultimate trust in default of children of testator or another person.

VII. IN TRUST for such pson or psons and such pposes as the sd — shall, while not under coverture by deed revocable or irrevocable, or whether covert or not by will or codicil, appoint: And in default of and subj't to any such appointmt in trust for such pson or psons as would by law have become entled to the sd trust premes at the death of the sd —, if she had been absolutely entled thto and had died intestate and a spinster, such psons, if more than one, to take the shares which they would have taken by law.

Ultimate trust of personalty in favour of married woman so as to exclude her husband, and children dying in infancy. (a).

VIII. IN TRUST for the psons or pson who would at my death have been entled to my personal este under the statutes for the distribution of the personal estes of intestates if I had died intestate, *or*, "who would at the time

Ultimate trust for testator's next of kin. Variation

(e) See last note.

(f) For real estate, say, "rents and profits."

(a) See p. 452, note. It is assumed that there is a prior trust for the children who attain twenty-one, &c.

where next
of kin to
be ascer-
tained at
failure of
prior
trusts.

of the failure or determination of all the prior trusts hinbefore decld and contd have been entled, &c., if I had died at the time of such failure or determination intestate," such psons, if more than one, to take the shares which they would have taken under the same statutes.

Cross exe-
cutory trust
for accruer
of shares
of residue
where the
shares, or
some of
them, are
settled.

IX. PROVD ALWAYS, and I declare that in the event of the failure or determination of the trusts hinbefore decld and contd concerning any share (g) in the sd trust premes, such share as well as any share or shares accruing or added thto by virtue of this proviso and the income (a) thof, or so much thof resply as shall not have been applied or disposed of under the trusts or powers herein contd or by law vested in my trees, shall go and accrue by way of addition to the other share or shares (b) in the sd trust premes, and if more than one, in equal shares and proportions, and every such accruing share shall be held upon the trusts and with and subjt to the powers and provons herein decld and contd concerning the original share or shares to which the same shall be added, or as near thto as circes will admit [but not so as to increase or multiply charges or powers of charging].

Accruer of
shares of
residue of
children
dying in
testator's
lifetime
where the

x. PROVD ALWAYS, that if any of my sd children shall die in my lifetime without leaving issue living at my death, the share in the sd trust premes hby given to such child, *if the daughters' shares are settled*, say, "being a son, or for the benefit of such child, being a daughter, and her issue," shall

(g) Where the sons' shares are given absolutely, and the daughters' shares are settled, say, "concerning any share of a daughter of mine in the sd trust premes."

(a) For real estate say, "rents and profits."

(b) In the case mentioned in note (g) say, "the share or shares of my other children, both sons and daughters in the sd trust premes, and if more than one, in equal shares and proportions, and so that the share or shares which shall so accrue and be added to the original share of any daughter of mine shall be held, &c."

sink into and form pt of the sd trust premes, and be held ^{gifts are to} and applied for the benefit of the other psons entled thto, in ^{them by} the same mner as if the child of mine so dying without ^{name (c).} leaving issue had been originally excluded from taking a share in the sd trust premes.

XI. PROVD ALWAYS, and I declare that in every case in ^{General} which any este or interest [for life or in reversion, re- ^{direction} mainder, or expectancy] [or, whether absolute or limited, ^{that in-} and whether in possion, reversion, remainder, or expectancy] ^{terests} and whether in real or personal este, is by this my will ^{given to} given to or in trust for any female, she shall not during ^{females} any coverture have power to dispose of or charge the same ^{shall be} or any pt thof by way of anticipation. ^{without} ^{power of} ^{anticipa-} ^{tion (d).}

XII. *Direction that interests of females shall be without* ^{General} *power of anticipation, as in last form :* PROVD ALSO, and I ^{clause re-} hby declare that in case any event whatever shall happen, ^{straining} whether in my lifetime or after my decease, whby any male ^{alienation} or any female not under coverture entled to any life interest ^{of life and} in personal este, or to any annuity under any of the trusts ^{reversion-} or dispositions hinbefore contd, would if such life interest ^{ary or ex-} or annuity belonged to him or her absolutely be deprived of ^{pectant} the personal enjoymt thof or of any pt thof, then such life ^{interests} interest or annuity shall cease as if he or she were dead : ^{in personal} And in the case of a life interest so ceasing the income ^{estate (e).} which shall be so forfeited shall during the remr of the life of the pson incurring the forfeiture thof be held upon the trusts upon which the s ame would for the time being be held if such pson were dead : PROVD ALSO, and I declare that in case any event whatever shall happen, whether in my lifetime or afterwards, before the time hby appointed for the vesting in possion of any legacy or

(c) The share in the residue given to a child by name who dies in the testator's lifetime without leaving issue living at the testator's death would lapse and be undisposed of, in the absence of such a provision as that in the text. As to the lapse of a share of residue the gift of which fails, see 4 Dav. Prec., 263.

(d) See p. 439, note ; and as to absolute interests, see p. 676, note.

(e) For a similar clause applicable to real estate, see p. 691.

share of personal este hby given to or in trust for a male or a female not under coverture [other than a settlemt of such legacy or share or some pt thof made before or after the marre of the legatee with the consent in writing of my trees], whby the pson entled thto under the trusts or provons hinbefore contd would if the sd legacy or share belonged to him or her absolutely be deprived of the personal enjoymt thof or of any pt thof, then such legacy shall sink into my residuary este, and such share shall be disposed of as if the legatee incurring such forfeiture had died in my lifetime without leaving issue.

Clause
declaring
trusts in
favour of
husband or
wife and
children of
child dying
in testa-
tor's life-
time by
reference
to trusts
for testa-
tor's widow
and chil-
dren.

XIII. AND I DECLARE that if any child of mine shall die in my lifetime leaving a wife or husband, or a child or children [or remoter issue] living at my death, then my trees shall stand possessed of the share in the sd trust premes to which such child would have been entled had he or she survived me and attained the age of twenty-one years, upon, with, and subjt to such trusts, powers and provons in favour of the surviving wife or husband, and child or children [and remoter issue] resply of such deceased child of mine as shall correspond with the trusts, powers, and provons hinbefore decld and contd concerning the sd trust premes in favour of my wife and child or children [and remoter issue], resply in the same mner as if such trusts, powers, and provons were herein repeated with such modifications as the case may require [except that the surviving wife or husband, if any, of such deceased child of mine shall not have any power of appointmt among the issue of such child]: PROVD ALWAYS, that in case the trusts hinbefore decld concerning the share of such deceased child of mine shall fail such share and the income thof shall subjt to the trusts and powers afsd or arising by operation of law fall into and revert to my residuary este.

Provision
as to divi-
sion of
trust fund
where
female is

XIV. PROVD ALWAYS, and I declare that if the sd — shall attain the age of [fifty] years, it shall be lawful for my trees to distribute the sd trust premes or such pt thof as would then be distributable if she were dead, without regard

to the possibility of her having other children, [but so that every child of hers to whom a share in the sd trust premees shall be paid or transferred during her life shall, if required by my trees, enter into a bond or covenant at the expense of my este [at his or her expense], for refunding a proportionate pt of the same in the event of her having any other child or children who shall attain a vested interest in the sd trust premees].

xv. AND I DECLARE that the benefits hby given to my wife shall be in full satisfon and bar of all dower and free-bench which she may be entled to claim out of any freehd, copyhd, or customary este, of or to which I have been, am, or shall be seised, possessed, or entled.

past child-bearing(f).

Dower clause (g).

MAINTENANCE, &c.

1. I DECLARE that my trees may, after the death [or future *Maintenance clause.* *Ordinary form for children or grandchildren of testator or another person (i).* *marre*] of my wife, [after the death of the sd, *tenant or tenants for life*] apply the whole, or such pt as they in their discretion shall think fit, of the income of the expectant or presumptive share of any child [or grandchild] of mine [of the sd —] in the sd trust premees (h) under the trusts hin-

(f) See *Re Warren*, W. N., 1883, p. 125.

(g) This clause can now rarely be required, see 4 Dav. Prec. p. 93.

(h) Or say, "the income of the expectant or presumptive legacy or share, &c.," as the case may require, and make consequential alterations in the accumulation clause.

(i) The maintenance and accumulation clause in the Conv. Act, 1881, s. 43 As to the (as to which, see p. 449, note), is applicable to any legacy or share of any fund maintenance (whether particular or residuary), which is held by trustees in trust for an infant, and whether the interest of the infant is absolute, or (as in the ordinary clause in the Conv. form of trust) expectant or contingent, or for life only; and in the case of Act, 1881, trusts of personal estate of this nature, the Act in general supersedes the necessity for the insertion of any express provisions for maintenance and accumulation. s. 43.

But where the interest of the infant is defeasible, i.e., is given *absolutely* in Cases to

before contd (a), for or towards his or her maintenance, education, or benefit (b), and may either themselves so apply the same, or may pay the same to the [parent or] guardians or guardian of such child [or grandchild] for the ppose asd, without seeing to the application thof.

Accumulation clause. Ordinary form as above.

II. AND SHALL, during the suspense of absolute vesting of any such share, accumulate the surplus, if any, of the income

which the Act does not apply.

the first instance subject to be *divested* by a gift over or accruer clause on death under twenty-one or other event, (a form of trust much less common than formerly), or by an overriding power of appointment, it seems that the Act does not apply (see p. 449, note); and express maintenance and accumulation clauses should be inserted. Sometimes the income is authorised to be applied as a common fund for the maintenance of all the children under age; and sometimes, where the fund is small, recourse to the capital is authorised. In these cases express provisions must of course be inserted. The Act also only applies to minority, and where the period of vesting is postponed to a later age than twenty-one, the application of the income after that time must be expressly provided for.

As to absolute legacy.

Where a legacy is given absolutely to an infant it is presumed that the executors while they hold the legacy would be trustees within the meaning of the Act.

As to real estate. Effect of ss. 42 & 43 of Act.

The statutory clause (s. 43) also applies to real estate vested in trustees for an infant; and the provisions for the like purposes in s. 42 applicable to real estate may also in that case apply, so as to cause difficulty, if the Act is relied upon, arising from the inconsistency adverted to in p. 450, note, between the two clauses as to the trusts of the accumulations. But where the land is devised in trust for sale the application of s. 42 is doubtful; and it would not apply where (as in the ordinary trust) the interest of the infant is contingent (see p. 450, note). In the common case therefore of a will giving the residue real and personal in trust for conversion and with the usual trust for children at twenty-one, &c., there is no objection to relying on the Act.

As to accumulations. Infant tenant for life.

Where the Act is relied on, it may sometimes be desirable to modify it as to the destination of the accumulations; e.g., where the infant is tenant for life, it may be proper that they should belong to him on attaining twenty-one, instead of being added to corpus as provided by s. 43 (which differs in this respect from s. 42).

(a) Where there are annuities charged, add, if appropriate, "subjt to and after paymt of the annuities hinbefore bequeathed, or a proportionate pt thof."

(b) Where circumstances require it the words "whether there is any fund applicable or any pson bound by law to provide for such maintenance or education or not" may be added to the clause in the text after "benefit," the words "or any pson, &c.," being omitted where the father takes a life interest. See p. 450, note.

thof at compound interest, by investing the same and the resulting income thof in any of the investmts hby authorised, in augmentation and so as to follow the destination of the share or fund from which the same shall have proceeded, but with power to apply any such accumulations in any subsequent year for or towards the maintenance, education, or benefit of the child [or grandchild] for the time being entled as afsd, in the same mner as such accumulations might have been applied, had they been income arising from the original trust fund in the then current year.

III. I DECLARE that my trees may, after the death, &c., as *in form I.*, apply the whole or such pt as they in their discretion shall think fit, of the income of the expectant or presumptive share or shares of any child or children [grandchild or grandchildren] of mine [of the sd —] in the sd trust premes under the trusts hinbefore contd, for or towards his or her maintenance, education, or benefit, or for or towards their common maintenance, education, or benefit, and may either themselves so apply the same, or may pay the same to the [parent or] guardians or guardian of such child or children [grandchild or grandchildren] for the ppses afsd, without seeing to the application thof. *The accumulation clause will be the same as above, form II., adding after the words, "presumptively entled as afsd," the words, "or for or towards the common maintenance, education, or benefit of the children [or grandchildren], for the time being objects of the last preceding trust."*

IV. I DECLARE that my trees may, after the determination or failure of every prior life or other interest or interests, if any, apply the whole, or any pt at their discretion, of the income of the expectant, contingent, presumptive or vested share, portion or legacy of any pson, who shall be under the age of twenty-one years and being a female a

Maintenance and accumulation clauses for children or grandchildren where the income may be applied as a common fund.

Maintenance and accumulation clauses adapted to various dispositions (c).

(c) This form is not well adapted to a case where there are annuities or other prior interests affecting part only of the income. In that case, the next form is to be preferred.

spinster, under any of the trusts or dispositions contd in this my will, for or towards his or her maintenance, education, or benefit (d), and may either themselves so apply the same, or may pay the same to the parent or guardians or guardian of such pson for the ppose afsd, without seeing to the application thof; AND SHALL during the minority of any such pson being a male, and minority and spinsterhood of any such pson being a female, accumulate, &c., *continue accumulation clause as in form II., saying "share, portion, or legacy," and, "of the pson for the time being expectantly, contingently, presumptively, or absolutely entled thto."*

Maintenance and accumulation clauses. A very general form (e).

- v. I DECLARE that my trees may apply the whole or any pt at their discretion of any income, to which any minor shall, or, if of full age being a male, or of full age or married being a female, would for the time being be entled in possion under any of the trusts or dispositions herein contd, for or towards his or her maintenance, &c., *as in last form*; AND SHALL, during such minority, or minority and spinsterhood, as the case may be, accumulate the surplus, if any, of the same income (a), &c., *continue accumulation clause as in*

(d) See p. 742, note (b) .

(e) This form is of the most general application, and is adapted to a case where annuities are charged, and where the infant is tenant for life.

(a) In the case of an infant tenant for life, if it is desired that the accumulations should belong to him if he attains twenty-one, &c. (which would not be the case under the statutory provision, see p. 742, note), continue as follows:—

Variation for tenant for life.

" in the way of compound interest, by investing the same and the resulting income thof in any of the investmts hby authorised, and shall stand possessed of such accumulations and investmts upon the trusts following, that is to say, if the person during whose minority the same shall have been accumulated shall, being a male attain the age of twenty-one years, or being a female attain that age or marry, then in trust for such pson absolutely, but if such pson shall die under the age of twenty-one years, and (in the case of a female) without having been married, then upon trust to add the same to, and so that the same shall follow the destina-

form II., saying, "fund from which the same shall have proceeded," and, "of any such minor as afd."

VI. I DECLARE that my trees may, &c., *as in form I., adding after "benefit," "during such time as such child or grandchild shall being a male be under the age of twenty-five years, or being a female be under that age and a spinster," and adding at the end, "or may pay the same to such child or grandchild personally if he or she shall have attained the age of twenty-one years," accumulation clause as in form II., adding, "PROVD ALWAYS that if at the end of twenty-one years from my death any child or grandchild of mine shall not have attained a vested interest in the sd trust premes, the trust for accumulation lastly hinfere contd shall cease to operate as to the expectant share of such child or grandchild in the sd trust premes, and the whole of the income of such share shall thenceforth and until such child or grandchild shall attain a vested interest be paid to him or her for his or her absolute benefit (b).*

Maintenance and accumulation clauses for testator's children or grandchildren where vesting is postponed to 25, &c.

VII. I AUTHORISE my trees after the death [or future *marre*] of my wife [after the death of the sd, *tenant or tenants for life*] or previously thto with her [his, or, their respive] consent in writing, to raise any pt or pts not exceeding in the whole [a moiety] of the then expectant, presumptive, or vested share of any child [or grandchild] of mine [of the sd —] in the sd trust premes (c) under the

Advancement clause. Ordinary form for children or grandchildren of testator or another person.

tion of, the fund from which the same shall have proceeded, but my trees shall have power to apply any such accumulations in any subsequent year for or towards the maintenance, education, or benefit of any such minor as afd in the same mner, &c., *as in form II.*

(b) It is assumed that the primary trust is for *such* children or grandchildren as attain twenty-five; otherwise the effect of this clause would be to make the shares vest at twenty-one; see *Southern v. Wollaston*, 16 Beav. 166.

(c) Or say, "the expectant, presumptive, or vested legacy or share, &c." as the case may be.

trusts hinbefore contd, and to pay or apply the same for the advancemt or benefit of such child in such mnner as my trees shall think fit (d).

The same,
adapted to
various
disposi-
tions.

VIII. I AUTHORISE my trees, after the determination or failure of every prior life or other interest or interests (if any), or previously thto with the consent in writing of every pson in existence for the time being entled to any such prior interest or interests whether vested or contingent, to raise any pt or pts not exceeding in the whole [a moiety] of the then expectant, contingent, presumptive, or vested share, portion, or legacy of any pson, under any of the trusts or dispositions of this my will, or any codicil hto, and to pay or apply the same for his or her advancemt or benefit as my trees shall think fit (e).

The same.
A very
general
form.

IX. I AUTHORISE my trees to raise any pt or pts not exceeding in the whole a moiety of the capital of any share, portion, or legacy, to which any minor shall, or if of full age being a male, or of full age or married being a female, would for the time being be entled [whether absolutely, or for a life, or other limited interest only, and] whether in possion or in reversion or expectancy, under this my will, or any codicil hto, and to pay or apply the same for his or her advancemt or benefit, as my trees shall think fit: Prov'd that no such advancemt shall be made during the existence

Addition
for land.

(d) If the trust property may consist of land, add " and if necessary or convenient the same may be raised by my trees by mtge of any hereds for the time being subj't to the trusts of this my will, and no mtgee shall be concerned to enquire as to the propriety of raising the same, or as to the amount which ought to be raised, and for the purpose of giving effect to this present provon the sd trust premes, *or as the case may be*, shall as far as necessary be valued in such mnner and at such times as my trees shall consider proper, and such valuation shall be conclusive."

(e) Where the trust property may consist of land, see the addition in the last note, saying " such share or portion shall, &c."

of any prior life or other interest or interests, whether vested or contingent, without the consent in writing of the person or persons entitled thereto (f).

X. I DECLARE that my trustees may pay or apply the whole, or any part at their discretion, of the income, or the capital, of the share, to which any child shall for the time being be entitled in expectancy, and would, if of full age, be entitled in possession, under the trusts hereinbefore decided, for or towards his or her maintenance, education, advancement, or benefit, and shall invest the surplus income (if any) in any such investments as are hereby authorised, in augmentation of the capital of such share.

Power of maintenance and advancement out of capital. Short form.

XI. I DECLARE that during the suspense of absolute vesting of the share, or, "portion," or, "legacy," to which any child, or, "person," shall for the time being be entitled in expectancy, under the trusts [lastly] hereinbefore continued, and to which such child, or, "person," if of full age, or if a female married, would be absolutely entitled in possession, my trustees shall accumulate the annual income of such share, or, "portion," or "legacy," at compound interest, by investing the same, and the resulting income thereof in any of the investments hereby authorised, in augmentation, and so as to follow the destination of the capital of such share, or, "portion," or, "legacy."

Accumulation clause where maintenance is not intended.

XII. AND I DECLARE that the several provisions as to maintenance and education of minors, and the accumulation and disposal of surplus income during minorities, hereinbefore continued with reference to the share to which any child of mine shall be entitled in expectancy as aforesaid, shall, after the determination or failure of the trusts hereinbefore decided, which are prior to the trust hereinbefore decided for the child or children of the said —, extend and be applicable to the income of the share to which any child of the said — shall for the time being be entitled in expectancy, under the trusts hereinbefore decided, with such alterations as may be necessary to adapt such provisions to that case.

Maintenance and accumulation clause for children of subsequent tenant for life by reference to trusts for testator's children.

(f) For the addition where the trust property may consist of land; see the addition in the last note.

Advance-
ment
clause for
children
of subse-
quent
tenant for
life by re-
ference to
trusts for
testator's
children.

Manage-
ment and
mainte-
nance
clause for
real or
leasehold
property,
during
minority.
Variations
for a mixed
fund of
realty and
person-
alty (a).

XIII. AND I DECLARE that, without prejudice to the trusts herein contd in priority to the trusts for the sd A., *tenant for life in remainder*, and B., his wife, my trees shall, after the death of the sd A. and B., or during their respive lifetime, with their respive consent in writing, have the like power of advancemt in favour of the child or children of the sd A. as is hinbefore contd with reference to the expectant, presumptive, or vested share of any child of mine, with such alterations as the case may require.

XIV. AND I DECLARE that [after the death [or future marre] of my sd wife, *or*, "of the sd —," and] during the minority [and spinsterhood] of the sd — my trees shall take and retain possion or receive the rents and profits of the sd real and leasehd hereds and premes hinbefore devised and bequeathed to [in trust for] the sd — as afsd, and manage the same, with all such powers as are conferred by the 42nd section of the Conveyancing and Law of Property Act, 1881, and all such other powers in that behalf, as if they were absolutely entled thto, and may after paying all outgoings and expenses, apply at their discretion the whole or any pt of the net rents and profits thof [and of the income of the personal este hinbefore bequeathed in trust as afsd] for or towards the maintenance, education, or benefit of the sd —, with power to pay the same to his [her] guardian or guardians for that ppose without seeing to

As to
minority
clause.

(a) This form and the next are intended for a specific or general devise of real or leasehold property with or without personalty to or in trust for an infant absolutely, or subject to a gift over on death under twenty-one or otherwise. It might also be adapted to a gift for life. For a similar clause adapted to a devise in strict settlement, see *infra*, DEVISES IN STRICT SETTLEMENT; and for a more detailed power of management, not confined to minorities, where there is a trust for conversion, see *infra*, p. 751. The clause might generally be omitted in reliance on the Conv. Act, 1881, s. 42 (see p. 585, note), which would apply and would probably suffice, subject to a question as to the disposal of the accumulations, for which it may be proper to make express provision (especially if the property is vested in trustees, so that s. 43 of the above Act would also apply, to prevent difficulty, see p. 587, note). If the Act is relied on, form XVI. should be inserted *mutatis mutandis*, as far as required. For a special power to carry on a farm which is in hand, see *infra*.

the application thof; and shall accumulate the surplus of the sd rents and profits [and income] during the minority [and spinsterhood] of the sd —, by investing the same and the resulting income thof in any investmts hby or by law authorised in the case of my residuary este or capital money arising therefrom, *or as the case may be*, as an addition to and so as to devolve as personal este with the sd hereds and premes, but with power to apply such accumulations for the maintenance, education, or benefit of the sd — in any subsequent year.

XV. AND I DECLARE that, [after the death [or future The same for real or leasehold property devised to children as tenants in common, with variations as above. marre] of my sd wife, *or*, “ of the sd —,” and] during the minority of any son [or grandson], or the minority [and spinsterhood] of any daughter [or granddaughter] of mine, [of the sd —,] my trees shall take and retain possion or receive the rents and profits of the share in the sd real and leasehd hereds and premes hinbefore devised and bequeathed to which such minor shall be [expectantly] entled, and manage the same, with all such powers, &c., *as in last form*, and may, after paying all outgoings and expenses, apply at their discretion the whole or any pt of the net rents, profits, and income of the [expectant] share of such minor in the sd real and leasehd premes [and in the personal este and premes hinbefore bequeathed in trust as afsd], for or towards the maintenance, education, or benefit of such minor, with power to pay the same to his or her guardian or guardians for that ppose, without seeing to the application thof; and shall accumulate the surplus of such net rents, profits, and income during the minority, or minority and spinsterhood, of such minor, by investing the same and the resulting income thof in any investmts hby or by law authorised in the case of my residuary este or capital money arising therefrom as an addition to and so as to devolve as personal este with the [expectant] share of such minor in the sd hereds and premes, but with power to apply such accumulations for his or her maintenance, education, or benefit in any subsequent year.

XVI. AND I HBY DECLARE that the sd, *trustees by name*, The same, relying on

and modifying
statutory
clause (b).

shall be the trees of this my will for the purposes of the 42nd section of the Conveyancing and Law of Property Act, 1881, the powers and provisions of which shall apply in relation to the sd real and leasehd hereds and premes hitherto devised and bequeathed [and so that it shall be obligatory on my trees to enter into and continue in the possession or receipt of the rents and profits of the same hereds and premes [or any undivided share thereof as the case may be] in every case thereby provided for]; [AND THAT in addition to the powers of the sd Act, my trees shall have power, &c., *insert any additional powers required*]; [AND THAT any surplus rents and profits and the accumulations thereof may during any such minority as is provided for by the sd Act be invested in any of the investments hereby authorised in the case of my residuary estate or capital money arising therefrom], and that any accumulations of rents and profits made during any such minority as aforesaid shall (without prejudice to the power to apply the same at any time as if the same had been rents and profits of the current year) be added to and go and devolve as personal estate with the sd hereds and premes.

Power of advancement for real or leasehold property. Variations for a mixed fund, and other circumstances (c).

XVII. I AUTHORISE my trees at any time [after the death or future marriage] of my sd wife, or, "of the sd —," or previously thereto with her [his] consent in writing] to raise by sale, mortgage, or otherwise, any part or parts not exceeding in the whole the sum of £—, or, "not exceeding in the whole a moiety of the value (to be determined for that purpose in such manner as my trees shall in their discretion think fit,)" of [the then expectant presumptive or vested share of any child [or grandchild] of mine [of the sd —] in] the sd real and leasehd premes, [or, *if a mixed fund*, the sd real and personal estate] under the trusts aforesaid, and to pay or apply the same for his or her advancement or benefit as my trees shall think fit [*add, if thought expedient*, Provided always and I

(b) See p. 748, note.

(c) This form with the appropriate variations is adapted to go with either of the two preceding forms.

declare that no phaser or mtgee shall be concerned to enquire as to the propriety of raising any money for the ppose of such advancemt, or the amount which ought to be raised or to see to the application thof.}]

XVIII. I EMPOWER my trees, if they shall think fit, to apply Power to keep up house for infants. all or any pt of the income applicable under this my will for the maintenance or education of my infant child or children for the time being, in or towards providing a suitable residence, and keeping up an establishmt for such child or children, or any of them, and for that ppose to take on lease or from year to year any proper dwelling-house, and defray all expenses connected thwith, or with the establishmt to be kept up therein, and also, if they shall think fit, to permit any adult child or children of mine to share the benefit of such residence and establishment either with or without contributing towards the expenses thof, and upon such terms as to the contribution, if any, to be made by such adult child or children, and in all other respects as my trees may in their discretion think fit.

POWERS TO TRUSTEES (d).

I. AND I DECLARE that until all the real and leasehd este Power to manage real and leasehold estate until sale. Full form (e). hinbefore devised and bequeathed to my trees in trust for conversion shall be sold, it shall be lawful for my trees to manage and cultivate or superintend the managemt and cultivation of the same premes or the unsold pt thof for the

(d) See also CONVERSION AND INVESTMENT, above, p. 699, *et seq.*

(e) Most of the powers in this clause are given by the Conv. Act, 1881, s. 42, where the Act applies; but the statutory clause is confined to minorities, and it is doubtful whether it applies where there is a trust for conversion (see p. 450, note). The clause in the text should therefore be inserted when required.

time being (*f*), including power to cut timber and underwood for sale, repairs, or otherwise, to open and work mines, minerals, quarries, and brickfields, and to erect, pull down, and repair houses and other buildings, and to drain and make roads and fences, and otherwise to improve all or any of the sd premes, and to insure houses and buildings against loss or damage by fire, and to make allowances to and arrangements with tenants and others, and to accept surrenders of leases and tenancies (*g*), and generally to deal with the ppty as if they were absolute owners thof without being responsible for any loss or 'damage which may happen thby (*a*): AND ALSO power to delegate, either expressly or by implication during such period or periods, and upon such terms as they shall think fit, the exercise of all or any of the powers of managemt and improvemt hinbefore contd to the pson or psons for the time being entled to the enjoymt of the rents and profits of the sd trust premes [or of any pt thof] if of full age, or to any other pson or psons interested therein under this my will, without being responsible for any loss occasioned thby; AND ALSO power conclusively to determine either by way of anticipation or otherwise, and either expressly or by implication what pt, if any, of the produce of timber, mines, minerals, quarries, or brickfields shall be applied as capital, and what pt, if any, as income, and so that such pt as shall be determined to be capital shall be disposed of as if the same had arisen from a sale of the sd premes: AND ALSO power to raise and pay the costs and expenses attending the exercise of the sd powers of manage-

(*f*) If there is no trust for conversion, say, "AND I DECLARE that it shall be lawful for my trees to manage or superintend the managemt of my real and leasehd este hinbefore devised and bequeathed in trust, including, &c."

(*g*) Power to accept surrenders of leases is conferred by the Settled Land Act, 1882, s. 13 (see p. 597, note); this power to the trustees to accept surrenders would, therefore, by s. 56 of the Act not be exerciseable without the consent of the donee or donees of the statutory power, if any.

(*a*) The rest of the clause may usually be omitted.

mt and improvemt out of the income, or as to any pt not exceeding two-third pts of the sums, if any, expended in improvemts which my trees shall consider to be of a permanent nature, by mtge or sale of the sd premes or any pt thof, or otherwise out of the capital of the sd trust premes.

II. AND I EMPOWER my trees to manage and cultivate my real and leasehd hereds hinbefore devised and bequeathed in trust [for sale until the same shall be sold (c)], and to cut timber and underwood for sale, repairs, or otherwise, and to repair and insure houses and buildings, and to make allowances to and arrangemts with tenants and others, and to accept surrenders of leases and tenancies.

III. AND I DECLARE that it shall be lawful for my sd trees [with the consent of any pson or psons whose consent may be necessary in that behalf under any law for the time being in force], to demise all or any of my real and leasehd hereds and premes hinbefore devised and bequeathed in trust [for sale, and which shall for the time being remain unsold (c)],

The same.
Short form
(b).

Power to
grant
leases of
unsold
lands (d).

(b) Compare form LVIII., p. 468.

(c) If there is no trust for sale omit the words in brackets.

(d) Where the land is devised without any trust for sale, and there is a tenant for life or limited owner of the whole or any undivided share within s. 2 or 58 of the Settled Land Act, 1882, the powers of the Act will apply, and be exerciseable by him as to the entirety or his share. Where it is devised in trust for sale, and there is a tenant for life, or limited owner within s. 63, of the proceeds of sale or any share thereof, the powers of the Act would also apply, and would in that case be vested in such limited owner, or, if the beneficial interest is divided, in him together with the other persons beneficially entitled in possession, whether absolutely or for limited interests. By the effect of s. 56 of the Act, in that case all such beneficiaries, as donees of the statutory powers, must join in any sale, lease, or other disposition of the property. See p. 699, note.

The embarrassment and inconvenience arising in many cases from the necessity for such concurrence (to the extent even of making the property unsaleable) renders some amendment of the Act necessary. A remedy may, perhaps, be found in a provision modifying s. 56, that in a case coming within s. 63, the existence of the statutory powers shall not interfere with the trust for sale, or powers of the trustees, unless and until the donee or donees of the statutory powers give written notice to the trustees of his or their intention to exercise those powers, either generally, or in a particular case; such notice being revocable, and in the event of its being revoked, the powers of the trustees

As to
effect of
Settled
Land Act.

Suggested
amend-
ment of
Act.

for any term of years not exceeding twenty-one years, [or for a mining lease not exceeding forty years, or for a building or improving lease not exceeding ninety-nine years], to take effect in possession or within six calendar months from the date of the lease, or "for any term of years either in possession or reversion, and for any purpose," with or without taking a fine or premium, and upon such terms and conditions in all respects as they shall think fit, but so that any sum received as a fine or premium shall be applied as if the same were proceeds of

to revive; and purchasers and lessees dealing in good faith with the trustees being of course protected. The trustees might also, until the donee or donees of the statutory powers should so intervene, be invested with those powers. These suggestions do not appear to conflict with the policy of the Act.

As to the insertion of express powers of leasing, &c.

Where the real estate is devised in trust for sale, or (without a trust for sale) on trusts creating a tenancy in common, it seems desirable to give any appropriate leasing and other powers, whether the Act may apply or not, either in detail or by incorporating the statutory powers. The leasing powers in the text would usually suffice. The words in brackets referring to the statutory powers may be inserted or not as is thought proper. For powers to grant building and mining leases, which may be adapted with merely verbal alterations to a will, see pp. 593, 596. But the comprehensive power in form v., *infra*, by reference to the Act is to be preferred to the insertion of detailed powers. The addition to the trust for sale and powers of leasing for a reversionary interest or undivided share in pp. 470 and 471, could be readily adapted to a will; but the provision for reversionary interests is of little importance having regard to the Settled Land Act.

As to effect of statutory conveyance.

Reference may here be made to a doubt which has been raised upon the wording of s. 20, sub-s. (2, ii.) of the Act, which provides that a conveyance to effectuate a sale or other disposition under the powers of the Act, is to pass the land, &c., discharged from the "limitations, powers, and provisions of the settlement, and all estates, interests and charges subsisting or to arise thereunder, but subject to and with the exception of (*inter alia*) all such estates and charges as have been conveyed or created for securing money actually raised: as to whether the conveyance would not be subject to a mortgage created by a remainderman on his estate (the case of an incumbrance by the tenant for life on his life estate being expressly provided for by s. 50). But this construction, which would render the Act unworkable, and would involve the absurdity that the estate of a purchaser from the remainderman would be overridden by the conveyance, while that of a mortgagee would not, does not appear to be legitimate, as the above words of exception must be read in connection with those which precede, so that the estates and charges excepted are only those created under the "limitations, powers, or provisions" of the settlement, *i.e.*, securities for money charged by the settlement itself, or under the powers contained in it,

a sale, and so that in case any lease shall be granted on the surrender or determination of a then existing or prior lease or tenancy, the value of the interest so surrendered, or the tenant right or claim to compensation for improvements or otherwise in respect of such tenancy, may be taken into account in fixing the rent and terms of the new lease (e).

IV. I AUTHORISE my trees [with the consent, &c., as in *form III.*], to concur with the other person or persons entitled to or having power in that behalf in relation to any property, whether real or personal, held in undivided shares, in making a partition of such property, [and that notwithstanding that any of my trees or a sole tree may be entitled to or interested in any of the other shares of the same, (g)] and to give or receive money for equality of partition, and to make any such partition upon such terms and conditions as they shall think proper, and for the purposes aforesaid to execute and do all such assurances and things as they shall think fit; And the property which shall on any such partition be taken by my trees in severalty, shall be held upon, with, and subject to the like trusts, powers, and provisions (so far as applicable) as the undivided share or shares for which the same shall be substituted, and any sum agreed to be paid for equality of partition may be paid out of my residuary personal estate, or raised by mortgage of or charge upon the property so taken in severalty, and any moneys received for equality of partition shall be applied as if the same had arisen from a sale of the said undivided share or shares.

Power of partition over realty and personalty (f).

V. AND I DECLARE that it shall be lawful for my trees [with the consent, &c., as in *form III.*], to exercise over or in relation to all or any of the hereditaments of whatever tenure for the time being held upon the trusts of this my will, all such powers of leasing and sale and other powers of every

Clause giving the trustees express powers of leasing, &c., by reference

(e) Compare the Settled Land Act, 1882, s. 13 (5) as to this.

(f) This power is concurrent with that in the Settled Land Act, 1882, s. 3, (iv.) if applicable (see p. 603, note), and could not be exercised without the consent of the donee of the statutory power.

(g) See above, p. 471, note (f).

to Settled
Land Act.
Addition
where the
statutory
powers are
extended.
(a).

description which may be applicable thto as are by the Settled Land Act, 1882, conferred upon tenants for life, and so that all the provons of the sd Act, subsidiary or incidental to such powers, shall be deemed to apply, and to be incorporated in these presents as far as circes may admit, subj nevertheless to the provons herein contd to the intent that such powers and provons shall operate and take effect in like mnner and with all the like incidents, effects, and consequences as if such powers had been conferred by the sd Act. [And also (by way of extension or enlargemt of the powers of the sd Act, and to the intent that the additional or larger powers hinafter contd shall as far as may be operate and be exerciseable in the like mnner, and with all the like incidents, effects, and consequences, as if the same were conferred by the sd Act), the powers hinafter contd (that is to say), &c., further powers, e.g., to grant leases for longer terms, or to make grants at fee farm rents (b)].

The same
for speci-
fically
devised
estate (c).

VI. I DECLARE that it shall be lawful for my trees, or other donee or donees, at any time before any son or daughter of mine shall attain an absolute vested interest in possession in

(a) See note (d) p. 753 ; and compare the form at p. 472. This power would of course include a power of sale where the will does not contain a trust for sale.

(b) As to extending the statutory powers, see p. 546, nota. For forms extending the powers, see *infra*, and DEVISES IN STRICT SETTLEMENT.

Cases in
which
Settled
Land Act
does not
apply.

(c) See p. 541, note, and the other notes above on the Act. There are some cases in which a devise is not to vest absolutely until the attainment of a given age, or other event, to which the Act does not apply ; e.g., where the rents during the minority of the donee or other definite term are given to some other person, as in the common case of a devise to an infant with a gift of the rents to the mother during the minority, whether subject to an obligation to maintain the infant or not, in which case the estate of the donee is not in possession so as to come within s. 58 or 59 (and s. 60 also would not apply), and the interim owner of the rents having only a chattel interest, would not have the powers of the Act ; but if there is an absolute trust of the interim rents for the infant's maintenance, this would amount to giving the infant an estate in possession, so as to bring the case within the Act ; see *Re Morgan*, W. N. 1883, 141. A gift in trust for a person *contingently* on his attaining twenty-one, or other event, does not appear to come within the literal words either of s. 58 (1, ii.), or of s. 59 or 60 ; but a gift in that form, coupled with a gift of the interim rents for the maintenance of the donee, was

the sd hereds and premes hinbefore devised, or, "during the minority of the sd —," or *as the case may be*, to exercise over or in relation to all or any pt of the same hereds and premes all such powers, &c., *as in last form*.

VII. AND I DECLARE that it shall be lawful for my trees, at the request in writing of the pson or psons of full age, if any, for the time being entled to the income of the sd trust premes, [and if there shall be no such pson at the discretion of my trees], to invest any moneys arising from the sale or conversion (which my trees are hby authorised to make for such ppose) of the sd trust premes, or any pt thof, in the pchase of any manors, messuages, lands, or hereds in England or Wales, [or Ireland,] of freehd, copyhd, or customary tenure, or held for any term of years of which not less than [fifty] years shall be unexpired at the time of such pchase, or in the enfranchisemt of any copyhd or customaryhd hereds pchased under the present power : And that all such hereds shall be assured to my trees, their hrs, exs, ads, and assigns, according to the tenure thof (*d*) upon trust that my trees shall with the consent in writing of the pson or psons for the time being entled to the income of the sd trust premes, if of full age, and if there shall be no such pson, at the discretion of my trees, sell such hereds (*e*), [either togr or in parcels,

Power to invest in the purchase of land.

held in *Re Morgan* to be within the Act. Where the Act does not apply, or its application is doubtful, express powers should be inserted ; and in the latter case they should, to avoid clashing, be given to the person in whom the statutory powers, if applicable, would be vested ; otherwise it will generally be proper in such a case to give them to the trustees.

(*d*) When the purchase is authorised to be made with the proceeds of real estate comprised in a general devise in trust for conversion, substitute for the rest of this form (except the proviso at the end for indemnity of trustees in respect of leaseholds), "upon the trusts, and with and subjt to the powers and provons upon, with, and subjt to which, the same premes would thenceforth be held, if the same had been comprd in the general devise and bequest in trust for conversion hinbefore contd."

(*e*) For variations for sale for fee farm rent, see p. 474, note (*h*), p. 475, note (*e*).

and either by public auction or private contract, and subj't to such condons as they shall think fit, with power to buy in, or rescind, or vary any contract for sale, and to re-sell, without being responsible for loss occasioned thby, and for the pposes afsd, or any of them, to execute and do all such assurances and things as they shall think fit (f)]: AND UPON FURTHER TRUST that my trees shall stand possessed of the net moneys to arise from every such sale after paymt of the costs thof upon the same trusts, and with and subj't to the same powers and proyons, including the sd power of pchasing hereds, as the money laid out in the pchase of the hereds so sold would have been subj't to if the same had not been so laid out: AND IN THE MEANTIME, (g) and until all the sd pchased hereds shall be sold, my trees shall have power to manage the same premes, and to make allowances to and arrangemts with tenants and others, and to accept surrenders of leases or tenancies: And to demise all or any pt of the same premes, *see leasing powers*, p. 754; And in the meantime, and until all the sd pchased hereds shall be sold, my trees shall pay and apply the rents and profits thof to the pson or psons for the pposes and in the mner, to whom and for and in which the income of the trust premes applied in the pchase of the sd hereds would have been applicable if such pchase had not been made, it being my intention that the sd pchased hereds shall be considered as money, and shall be subj't in all respects to the same trusts as the money laid out in the

(f) The part in brackets may be omitted, as these powers are supplied by the Conv. Act, 1881, s. 35.

Variation.

(g) If the will contains a devise of land with powers of management, leasing, &c., the powers may be given by reference as follows:—"AND IN THE MEANTIME and until all the sd pchased hereds shall be sold, my trees shall have the like powers of managing, improving, granting leases of, and accepting surrenders of leases and tenancies of the same as are hinbefore given to them in respect of, &c."

pchase thof would have been subj to if such pchase had not been made: PROVID ALWAYS that in the event of any leasehd hereds being pchased under the trust or power hinbefore contd, my trees shall be entled to be indemnified to the fullest extent out of the trust premes for the time being and the rents and income thof in respect of any liability incurred by them to the paymt of the rents and the performance of the covenants and condons reserved by or contd in the lease under which such premes are held, or under any covenant entered into by my trees on the pchase of the sd hereds or otherwise in relation thto (a).

VIII. PROVID ALWAYS, and I empower my trees at any time, at the request in writing of my sd wife, to lay out any sum not exceeding £—— arising from the sale (which they are hby authorised to effect) of any pt of the sd trust premes in the pchase of a messuage, with suitable outbuildings and offices and other appurtenances, and with or without gardens, pleasure grounds, and land to be held thwith, as a residence for her, such messuage and premes to be situate in England or Wales, and to be either freehd, or copyhd, or leasehd, held for a term of years of which not less than [forty] years shall be unexpired at the time of pchase, and to be assured to my trees, their hrs, exs, ads, or assigns, as the case may require (b) upon trust, &c., *trust for sale and trusts of proceeds, as in last form, substituting "messuage and premes" for "hereds:"* AND MY TREES shall until such sale permit my sd wife to occupy such messuage and premes, but with power to them, with such consent or at such discretion as afsd, to demise the same or any pt thof for any term not exceeding twenty-one years, to take effect in possion or within six calendar months from the date of the demise, at rack-rent, the rent received under any such lease to be paid or applied in the same mnner as the income arising from the proceeds of the sale of the sd messuage and premes would

Power to purchase a house for residence of wife.

(a) See as to this, 2 Dav. Prec., pt. 1, p. 423, note.

(b) See p. 757, note (d).

be payable or applicable if the same were sold ; *Proviso for indemnity of trustees in respect of leaseholds, as in last form.*

Power to trustees to sell house and furniture bequeathed to wife for life (d).

IX. I AUTHORISE my trees, during the life of my wife with her consent in writing, to sell all or any pt of the sd messuages and hereds, furniture, plate, and household effects hinbefore devised and bequeathed in trust for her for life, [either togr or in parcels, and either by public auction or private contract, and subj to such condons as they shall think fit, with power to buy in, rescind, or vary any contract for sale, and to resell without being responsible for loss, and for the pposes afsd, or any of them, to execute and do all such assurances and things as they shall think fit (c),] [And the net monies arising from such sale shall sink into and form pt of my residuary este].

Power to purchase furniture for wife.

X. PROVD ALWAYS, and I authorise my trees at any time, at the request in writing of my sd wife, to lay out any sum not exceeding £—— out of my personal este in the pchase of furniture, to be held, used, and enjoyed by my wife during her life, she keeping the same insured against fire, and in good repair and preservation, reasble wear and tear excepted, and after her death to fall into my residuary este. *Inventory as in form XXIII. or XXIV., p. 660, substituting "trees" for "exs," in form XXIII.*

Power to lay out for building, &c. Short form (e).

XI. I AUTHORISE my trees to lay out for building any of the hereds hinbefore devised in trust for sale, and to erect, build, make, and lay down on or under the same any houses, buildings, roads, paths, sewers, drains, gas-pipes, water-pipes, and other conveniences, at the expense of my residuary este.

Power to trustees to determine questions.

XII. I AUTHORISE my trees to determine what articles pass under any specific bequest contd in this my will, or any codicil hto, and whether any monies are to be considered as capital or income, and whether any expenses, outgoings,

(c) The part in brackets may be omitted, see the Conv. Act, 1881, s. 35.

(d) This power is of course given to the wife by the Settled Land Act, 1882, as to the house.

(e) See the full form in SETTLEMENTS REAL, p. 599.

or other paymts ought to be paid out of capital or income, and how valuations are to be made, or value determined, for the ppose of any case of [hotchpot, or satisfaction, or] allotment, or appropriation, or otherwise, and to apportion blended trust funds, and to determine all questions and matters of doubt arising in the execution of the trusts of this my will, or any codicil hto: And I declare that every such determination, whether made upon a question actually raised or implied in the acts or proceedings of my trees, shall be conclusive and binding on all psons interested under this my will or any codicil hto.

XIII. I DECLARE that my trees may exercise or concur in exercising all powers and discretions hby or by law given to them, notwithstanding that they or any of them may have a direct or other personal interest in the mode or result of exercising any such power or discretion [but any of my trees shall nevertheless be at liberty to abstain from acting except as a merely formal party in any matter in which he may be so personally interested, and to allow his co-trees or co-tree to act alone in the exercise of the powers and discretions afsd in relation to such matter].

Power to trustees to act although personally interested.

DEVICES IN STRICT SETTLEMENT a).

1. To SUCH USES (b), upon such trusts [or, To THE USE of, or (b) in trust for such psons or pson, for such estes or este, interests or interest], and with and subjt to such

General power of appointment.

(a) Most of the clauses in SETTLEMENTS REAL can be readily adapted to wills in strict settlement, with the necessary modifications in the commencement of the clauses and a few other obvious alterations. See also SPECIFIC DEVICES. With reference to the recent legislation affecting the frame of wills in strict settlement, see the notes to SETTLEMENTS REAL.

(b) If the legal estate is in the trustees, omit the words "TO SUCH USES," or "TO THE USE OF, or."

powers and provons as — shall from time to time by any deed or deeds, revocable or irrevocable, or by will or codicil, appoint, AND IN DEFAULT of and subjt to any such appointmt, &c.

The same
to two
persons
jointly (c).

II. To SUCH USES, &c., *as above*, as — and — shall from time to time by any deed or deeds, revocable or irrevocable, jointly appoint, AND IN DEFAULT of and subjt to any such appointmt, &c.

The same
to married
woman re-
stricted (d).

III. To SUCH USES, &c., *as above*, form I., as — the wife of — shall while discovert by deed, revocable or irrevocable, or, whether covert or discovert, by will or codicil, appoint, AND IN DEFAULT of and subjt to any such appointmt, &c.

Limitation
of a term.

IV. To THE USE of the sd, *trustees*, their exs, ads, and assigns, for the term of — years to commence from [my death], [without impeachmt of waste,] upon the trusts and with and subjt to the powers and provons hinafter decl'd and contd concerning the same, and from and after the determination of the sd term, and in the meantime subjt thto and to the trusts thof, To THE USE, &c., *or, for brevity*, “for the term of — years from — upon the trusts hinafter decl'd and subjt thto, To THE USE, &c.”

Limitation
of a life
estate.

V. To THE USE of [*or, if the legal estate is in the trustee*, IN TRUST FOR] — and his assigns during his life [without impeachmt of waste (e)], with remr To THE USE [IN TRUST], &c.

Limitation
of life
estate to
woman
without
anticipa-
tion (f).

VI. To THE USE of [IN TRUST FOR] the sd, *woman*, and her assigns during her life [without impeachmt of waste (e)], but so nevertheless that during [her present or any future] coverture she shall not have power to dispose of the

(c) For a power to two persons or the survivor, see above, p. 552, form I.

(d) The object of this form, of course, is to preclude a binding appointment being made in favour of a husband.

(e) See p. 553, note (c). Add here, if so required, “he keeping the mansion house at — in tenantable repair.” As to these words see *Woodhouse v. Walker*, 5 Q. B. D. 405. As to the liability of tenants for life impeachable for waste in respect of permissive waste, see 3 Day. 289.

(f) See note p. 554.

rents and profits of the sd premes by way of anticipation, and from and after her death To THE USE [IN TRUST], &c.

VII. To THE USE of, *trustees*, and their hrs, during the life of K., of, &c. [without impeachmt of waste (e)], UPON TRUST, that if at the time of my death [*or, if the life estate is in remainder*, at the time of this present limon taking effect in possion] the sd K. would not by reason of any antecedent bankruptcy or alienation or charge, or attempted alienation or charge, or the happening of any other event, [whether before or after my decease,] be wholly or partially prevented from personally enjoying the life interest hby given to him in the sd hereds and premes, if the same were given to him absolutely, then my sd trees shall allow the sd K. to enter into and remain in the possion, or the rect of the rents and profits, of the sd premes [including the produce of timber cut in a due and proper course of managemt, and of mines, minerals, quarries, and brick-fields], during his life, or until he shall become bankrupt, &c., *as in form v., p. 554.*

Life interest determinable on bankruptcy, &c.
Variations where it is protected (g).

VIII. AND I DECLARE that every este for life hinbefore limited shall be without impeachmt of waste.

Life estate to be without impeachment of waste.
Limitation of rent-charge (a).

IX. To THE USE that —, and his [her] assigns, shall during his [her] life [widowhood] receive a yearly rent-charge of £—, without any deduction except for legacy

(e) See last page, note (e).

(g) For a discretionary trust for application of income after bankruptcy, &c., of tenant for life, for benefit of him and his family, see p. 555, form vi., and for the trust of income after bankruptcy, &c., where there is no discretionary trust in his favour, see p. 556, form vii.; and for a general clause determining life estates on bankruptcy, &c., see p. 556. These forms may be readily adapted to wills.

(a) Where the rent-charge is limited to widow of tenant for life, say, "To THE USE that —, the wife of the sd —, &c.," the first payment to be made "at the expiration of three calendar months after the death of the sd —." For variations where the legal estate is in the trustees, see p. 559, form xi.; as to the omission of the powers of distress and entry, see p. 557, note, and for the forms of such powers, see p. 560; and for a power to the owner of the rent-charge to appoint a term to trustees for raising it, see p. 561.

for any term of years not exceeding twenty-one years, [or for a mining lease not exceeding forty years, or for a building or improving lease not exceeding ninety-nine years], to take effect in possession or within six calendar months from the date of the lease, or "for any term of years either in possession or reversion, and for any purpose," with or without taking a fine or premium, and upon such terms and conditions in all respects as they shall think fit, but so that any sum received as a fine or premium shall be applied as if the same were proceeds of

to revive; and purchasers and lessees dealing in good faith with the trustees being of course protected. The trustees might also, until the donee or donees of the statutory powers should so intervene, be invested with those powers. These suggestions do not appear to conflict with the policy of the Act.

As to the insertion of express powers of leasing, &c.

Where the real estate is devised in trust for sale, or (without a trust for sale) on trusts creating a tenancy in common, it seems desirable to give any appropriate leasing and other powers, whether the Act may apply or not, either in detail or by incorporating the statutory powers. The leasing powers in the text would usually suffice. The words in brackets referring to the statutory powers may be inserted or not as is thought proper. For powers to grant building and mining leases, which may be adapted with merely verbal alterations to a will, see pp. 593, 595. But the comprehensive power in form v., *infra*, by reference to the Act is to be preferred to the insertion of detailed powers. The addition to the trust for sale and powers of leasing for a reversionary interest or undivided share in pp. 470 and 471, could be readily adapted to a will; but the provision for reversionary interests is of little importance having regard to the Settled Land Act.

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Reference may here be made to a doubt which has been raised upon the wording of s. 20, sub-s. (2, ii.) of the Act, which provides that a conveyance to effectuate a sale or other disposition under the powers of the Act, is to pass the land, &c., discharged from the "limitations, powers, and provisions of the settlement, and all estates, interests and charges subsisting or to arise thereunder, but subject to and with the exception of (*inter alia*) all such estates and charges as have been conveyed or created for securing money actually raised." as to whether the conveyance would not be subject to a mortgage created by a remainderman on his estate (the case of an incumbrance by the tenant for life on his life estate being expressly provided for by s. 50). But this construction, which would render the Act unworkable, and would involve the absurdity that the estate of a purchaser from the remainderman would be overridden by the conveyance, while that of a mortgagee would not, does not appear to be legitimate, as the above words of exception must be read in connection with those which precede, so that the estates and charges excepted are only those created under the "limitations, powers, or provisions" of the settlement, *i.e.*, securities for money charged by the settlement itself, or under the powers contained in it,

a sale, and so that in case any lease shall be granted on the surrender or determination of a then existing or prior lease or tenancy, the value of the interest so surrendered, or the tenant right or claim to compensation for improvements or otherwise in respect of such tenancy, may be taken into account in fixing the rent and terms of the new lease (e).

IV. I AUTHORISE my trees [with the consent, &c., as in *form III.*], to concur with the other person or persons entitled to or having power in that behalf in relation to any property, whether real or personal, held in undivided shares, in making a partition of such property, [and that notwithstanding that any of my trees or a sole tree may be entitled to or interested in any of the other shares of the same, (g)] and to give or receive money for equality of partition, and to make any such partition upon such terms and conditions as they shall think proper, and for the purposes aforesaid to execute and do all such assurances and things as they shall think fit; And the property which shall on any such partition be taken by my trees in severalty, shall be held upon, with, and subject to the like trusts, powers, and provisions (so far as applicable) as the undivided share or shares for which the same shall be substituted, and any sum agreed to be paid for equality of partition may be paid out of my residuary personal estate, or raised by mortgage of or charge upon the property so taken in severalty, and any moneys received for equality of partition shall be applied as if the same had arisen from a sale of the said undivided share or shares.

Power of partition over realty and personalty (f).

V. AND I DECLARE that it shall be lawful for my trees [with the consent, &c., as in *form III.*], to exercise over or in relation to all or any of the hereditaments of whatever tenure for the time being held upon the trusts of this my will, all such powers of leasing and sale and other powers of every

Clause giving the trustees express powers of leasing, &c., by reference

(e) Compare the Settled Land Act, 1882, s. 13 (5) as to this.

(f) This power is concurrent with that in the Settled Land Act, 1882, s. 3, (iv.) if applicable (see p. 603, note), and could not be exercised without the consent of the donee of the statutory power.

(g) See above, p. 471, note (f).

same manner as if such daughter had died immediately after me and so that (f)] the hrs [male] of the body of such daughter shall take the like share or shares or este original or accruing in the sd premes which such daughter would have taken had she survived me, and with the like remr over on failure of her issue [male].

Limitations in tail general by reference to limitations in tail male.

XVI. To THE USE that all and every the psons or pson, to whom estes in tail male by pchase are hinbefore limited, may severally and successively take estes in tail general in remr one after the other in the same order and priority in which they resply take estes in tail male, WITH REMR, &c.

Limitations in remainder by reference.

XVII. WITH REMR To THE USE of every son and daughter born in my lifetime of the sd —, and the issue of each such son and daughter, for the same estes and in the same order and mner as the sd premes are hinbefore limited to every son and daughter of mine, and his and her respive issue, with remr To THE USE of every son and daughter born after my death of the sd —, and the issue of each such son and daughter, for the same estes and in the same order and mner as the sd premes are hinbefore limited to the use of every son and daughter born after my death of every son and daughter of mine, with remr To THE USE of — and his issue for the same estes and in the same order and mner as the sd premes are hinbefore limited to the sd — and his issue, WITH REMR, &c.

Limitations in strict settlement to testator's sons and their issue male.

XVIII. To THE USE of my eldest son, A., during his life, with remr To THE USE of his first and every other son actually born in my lifetime, severally and successively according to seniority during their respive lives, with an immediate remr after the death of each such grandson of mine To THE USE of his first and every other son severally and successively according to seniority in tail male, with remr after the decease of all the sons of the sd A. born in my lifetime and the default or failure of such issue male as aforesd of all such sons To THE USE of the sons of the sd

(f) The words in this bracket might be better omitted.

A. born after my death severally and successively according to seniority in tail male with remr To THE USE that my sons B., C., and D., and every son of mine hereafter born, and their respive sons and grandsons, shall take estes similar to and with the same order and priority as those hinbefore limited to the use of the sd A., his sons and grandsons, BUT so that the elder of such sons of mine and his sons and grandsons shall always be preferred to the younger of such sons of mine, and his sons and grandsons, in the same mner as if the uses hinbefore limited to or in favour of the sd A., his sons and grandsons, were repeated with the substitution of the name of each of my sd sons in succession, according to seniority, for the name of the sd A., WITH REMR, &c.

XIX. To THE USE that all my daughters and their respive sons [and grandsons] shall take estes similar to and with the same order and priority as those hinbefore limited to the use of my said son A., his sons [and grandsons], BUT so that the elder of such daughters of mine, and her sons [and grandsons] shall always be preferred to the younger of such daughters of mine, and her sons [and grandsons], in the same mner in all respects as if the uses hinbefore limited to or in favour of the sd A., his sons and grandsons, were repeated, with the necessary verbal alterations and the substitution of the name of each of my daughters in succession according to seniority, for the name of the sd A., WITH REMR, &c.

Limitations to testator's daughters and their issue male, in remainder immediately after limitations to the sons and their issue male.

XX. To THE USE that each of my great grandsons (grandsons of the sd A.) to whom estes in tail male are hinbefore limited, shall take an este in tail general in the same order and priority as the este in tail male hinbefore limited to him, with remr To THE USE of all my great granddaughters (daughters of the sons born in my lifetime of the said A.), severally and successively, in remr one after the other in tail male, so

Limitations in remainder to the issue general of testator's sons where there are previous limitations exhausting the testator's male issue (g).

(g) In the form in the text, males are preferred to females, and females claiming through males of a more remote generation are preferred to those

that the daughters of an elder son of the sd A. shall always be preferred to the daughters of a younger son of the sd A., and shall, as between themselves, take in order of seniority, with remr To THE USE that each of my sd great granddaughters (daughters of the sons born in my lifetime of the sd A.) shall take an este in tail general in the same order and priority as the este in tail male hinfefore limited to her with remr To THE USE of the first and other daughters of the sd A. born in my lifetime, severally and successively one after the other, according to seniority, during their respive lives, with an immediate remr after the death of each such granddaughter of mine To THE USE of her first and every other son severally and successively in remr one after the other according to seniority in tail male, with remr after the death of all such daughters of the sd A. and the default or failure of their issue male, To THE USE of all my great grandsons (sons of the daughters born in my lifetime of the sd A.), severally and successively, in remr one after the other in tail general, so that the sons of an elder daughter of the sd A. shall be preferred to the sons of a younger daughter of the sd A., and shall, as between themselves, take in order of seniority, with remr To THE USE of all my great granddaughters (daughters of the daughters born in my lifetime of the sd A.), severally and successively in remr one after the other in tail male, so that the daughters of an elder daughter of the sd A. shall be preferred to the daughters of a younger daughter of the sd A., and shall, as

claiming through males of a nearer generation. Sometimes the testator's daughters and their male issue are preferred to the female issue of the testator's sons; in other words, males are preferred to females, and females claiming through males of a nearer generation are preferred to those claiming through males of a more remote generation. In this latter case, for consistency, the form in the text should be altered, so as to make the estates in tail male of the females precede the estates in tail general of the males of the same generation. But it is believed that in practice this nicety is seldom attended to; and it is apprehended that, in the absence of special instructions, the form in the text may be used, although the limitations to the daughters of the testator, and their male issue (form XIX.), immediately follow the limitations to his sons and their male issue (form XVIII.).

between themselves, take in order of seniority, with remr To THE USE that each of my great granddaughters (daughters of daughters born in my lifetime of the sd A.), shall take an este in tail general in the same order and priority as the este in tail male hinbefore limited to her, with remr To THE USE of the sons of the sd A. born after my death, severally and successively, in remr one after the other according to seniority in tail general, with remr To THE USE of the daughters of the sd A. born after my death, severally and successively in remr one after the other according to seniority in tail male, with remr To THE USE of the daughters of the sd A. born after my death, severally and successively in remr one after the other according to seniority in tail general, with remr To THE USE that the sons, grandsons, daughters, and granddaughters of the sd B., C., and D., and of every son of mine hereafter born, shall take estes similar to and with the same order and priority as those hinbefore limited to the use of the sons, grandsons, daughters, and granddaughters of the sd A. in remr after the default or failure of issue male of all my sons [(a) and daughters], BUT so that the sons, grandsons, daughters, and granddaughters of an elder son of mine shall always be preferred to the sons, grandsons, daughters, and granddaughters of a younger son of mine, in the same mner as if the uses hinbefore limited to or in favour of the sons, grandsons, daughters, and granddaughters of the sd A. in remr as afsd were repeated, with the substitution of each of my sons in succession according to seniority, for the sd A., WITH REMR, &c.

XXI. To THE USE that all my daughters and their respive issue shall take estes similar to, and with the same order and priority as those hinbefore limited to the use of my sons and their respive issue in the same mner in all respects as

Limita-
tion to
testator's
daughters
and their
issue, by

(a) The words in brackets will be inserted if the limitations to the testator's daughters and their issue male, form XIX., precede the limitations in remainder to the issue general of the testator's sons.

reference
to the
limitations
to his sons
and their
issue (b).

if the uses hinbefore limited to or in favour of my sons and their respive issue were repeated, with the necessary verbal alterations and the substitution of each of my daughters in succession according to seniority, for my sons respily, WITH REMR, &c.

Limita-
tions to
issue of
testator's
daughters
by refer-
ence to the
issue of
his sons.

XXII. To THE USE that the issue of my respive daughters in succession, according to the seniority of such daughters, shall take estes similar to and with the same order and priority as those hinbefore limited to the use of the issue of my respive sons in remr after the default or failure of issue male of all my daughters, in the same mner in all respects as if the uses hinbefore limited to or in favour of the issue of my respive sons in remr as afsd were repeated with the necessary verbal alterations and the substitution of my daughters for my sons, WITH REMR, &c.

Successive
limitations
in fee by
way of
executory
devise (c)

XXIII. To THE USE of my eldest son who shall survive me, his hrs, and assigns, and in case he shall die under the age of twenty-one years To THE USE of my other sons who shall survive me, successively by way of executory limon according to their respive seniorities and their respive hrs and assigns, and so that if any such son shall die under the age of twenty-one years his este shall be divested and go to my next son, but, if I shall leave no son surviving me who attains the age of twenty-one years, then To THE USE, &c.

Limitation
to issue of
tenant for
life, as he
shall ap-
point.
Short
form (d).

XXIV. To THE USE of all or any of the children [or remoter issue] of the sd —, for such estes or este, interests or interest, and, if more than one, in such shares and mner as the sd — shall by deed revocable or irrevocable, or by will or codicil appoint, AND IN DEFAULT of and subjt to any such appointmt, To THE USE, &c.

Ultimate
limitation
to testator's
heirs (e).

XXV. To THE USE of my right hrs.

(b) This form is intended to follow forms XVIII. and XX. If form XIX. is inserted, form XXII. will be substituted for form XXI.

(c) If it is desired to provide for a son dying in the testator's lifetime leaving issue, this form cannot conveniently be used.

(d) The full form may readily be adapted from SETTLEMENTS REAL, p. 562, form XX.

(e) For a limitation to the testator's heirs, at a particular time, see 4 DEV. Prec., p. 450.

XXVI. AND I DECLARE that the sd hereds and premes are hby devised to the sd, *trustees*, their exs, ads, and assigns, for the sd term of — years, UPON TRUST that the sd, *trustees*, or the survor of them, or the exs or ads of such survor, shall, during the life of the sd —, by and out of the rents and profits of the sd premes or by the sale of timber or minerals, or by mtge of the sd premes, or any of them, for all or any pt of the sd term, or by all or any of the means afsd, raise the annual sum of £—, commencing from my death, clear of all deductions except legacy duty and income tax, and shall pay the same to the sd — [so that during [her present or any future] coverture she shall not have power to dispose thof by way of anticipation], such annual sum to be considered as accruing from day to day, but to be paid by quarterly paymts, and the first of such paymts to be made at the expiration of three calendar months from my death, if the sd — shall then be living [and (f) shall also retain or pay all such monies as shall be required to defray and satisfy the costs and expenses incurred in performing any of the trusts of the sd term or otherwise in relation thto, and shall permit the pson or psons for the time being entled in reversion immediately expectant upon the same term to the premes therein comprd to receive the surplus of the rents and profits of the same premes after paymt and satisfon of the annual sum [or sums] and costs and expenses afsd].

Trusts of term to raise annuity. Variation where the annuity is for a woman without anticipation.

XXVII. AND I HBY DECLARE that the sd hereds are hby devised to the sd, *trustees*, &c., *continue as in* SETTLEMENTS REAL, p. 568, *form* XXV.

Trusts of term for further securing rent-charge or rent-charges previously charged (g). Trusts of term for

XXVIII. AND I DECLARE that the sd premes are hby devised to the sd, *trustees*, their exs, ads, and assigns, for the sd term of 1000 years upon trust, if I shall have any younger child or children, meaning thby any child or children who

(f) The part in this bracket may be omitted, if a general clause, as at p. 578, form XXX., is inserted.

(g) This clause will not now be often required, see p. 557, note (d).

raising
portions
for testa-
tor's chil-
dren (a).

survive me and being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, [or who die in my lifetime leaving issue surviving me,] other than any son or sons of mine who before his or their resply attaining the age of twenty-one years shall become entled [or any daughter or daughters who before her or their resply attaining that age or marrying shall become entled] in possion under this my will to the sd hereds and premes for the first este for life, then the sd trustees, or the [survors or] survor of them, or the exs or ads of such survor (b) shall by mtge of the sd premes or any pt thof for all or any pt of the sd term, or by and out of the rents and profits thof or any pt thof, or by the sale of timber or minerals, or by all or any of the means afsd, raise the sum of £—— for the portion of each younger child of mine, and pay the same to him or her, or his or her representatives, and upon further trust that the sd trees or tree shall by any such means as afsd raise such annual sum not exceeding £—— as they or he shall think fit for the maintenance, education, or benefit of each child for the time being entled in expectancy to a portion, and apply the same accordingly, either directly or by paying the same to the guardian or guardians of such child without seeing to the application thof; And I authorise the sd trees or tree to raise, by any such means as afsd, any sum or sums not exceeding in the whole a moiety of the expectant portion of any child, and to apply the same at their or his discretion for the advancemt or benefit of such child, *Advancements by testator in his lifetime to be brought into hotchpot*, p. 793, form xxv., *mutatis mutandis*; I further authorise the sd

(a) In this form a fixed sum is given to each child. The form at p. 569, where a sum, either fixed or dependent on the number of the children, is given to the children as tenants in common, can be adapted.

(b) In this form and throughout the strict settlement forms the expression, "my trees," may be used, as in other wills, unless there is more than one set of trustees; but it may be expedient to insert the declaration as to the devolution of the trustees' powers, see below, *TRUSTEE CLAUSES*.

trees or tree at their or his discretion, when any portion or portions shall be payable, *continue power to raise total sum for portions before they are all payable*, p. 571; [(c) And subj to the trusts afsd and to the right of the sd trees or tree to raise by any of the means afsd all costs and expenses incurred in the execution of the trusts of the sd term, the rents and profits of the premes comprd in such term, or so much thof as shall not be required for the ppses afsd, shall be taken and received by the pson or psons entled to the sd premes in reversion expectant on the same term].

XXIX. AND I HBY DECLARE that the same premes are hby devised to the sd, *trustees*, their exs, ads, and assigns, for the sd term of 1000 years UPON TRUST if there shall be any younger child or children of the sd —, meaning thby. &c., *continue as in SETTLEMENTS REAL*, p. 569, *form xxvi.*, *mutatis mutandis*.

Trusts of term for raising portions for children of another person.

XXX. AND I HBY DECLARE that the sd premes are hby devised to the sd, *trustees*, their exs, ads, and assigns, for the sd term of — years, UPON TRUST that the sd, *trustees*, their exs or ads, shall by mtge of the sd premes, or any pt thof, for all or any pt of the sd term, or by the sale of timber or minerals, or by and out of the rents and profits thof, or by all or any of such means, raise in aid and in case of deficiency of, or, “in exoneration of,” my personal este, such sum or sums of money as may be sufficient to discharge my funeral and testamentary expenses and debts and the legacies given by this my will or any codicil thto, and shall pay and apply such monies accordingly: AND no mtgee or other pson advancing or paying such monies, or any pt thof, shall be concerned to inquire [as to the deficiency of my personal este, or] whether any money is actually wanted for the ppses afsd: [(e) AND FURTHER,

Trusts of term to pay debts and legacies (d).

(c) The words in this bracket may be omitted if a general clause, as at p. 578, *form xxx.* be inserted.

(d) See also the form of power to raise money to pay debts, &c., p. 703, and the trusts of a term for raising money for various purposes, p. 575.

(e) The clause in this bracket will be omitted if the personalty is to be exonerated.

that it shall be lawful for the sd trees or tree to raise any monies under the trusts of the sd term before it shall be ascertained whether any and what sum will be wanted, and to apply the same for the ppses afsd]: AND FURTHER, that if any money shall be raised under the trusts of the sd term which shall not be required for the ppses afsd, the sd trees or tree [(f) shall pay the same to the trees or tree for the time being authorised to receive and give a discharge for monies arising from a sale of the sd hereds, who] shall apply the same as if arising from a sale of such hereds, *add direction as to costs and surplus rents, as in form xxviii., unless a general clause for that purpose is inserted.*

Power to
jointure.

XXXI. PROVD ALWAYS and I declare, that it shall be lawful for each [male] pson hby made [legal or equitable] tenant for life of the sd premes, either before or after he shall become entled, &c., *continue power to jointure, p. 579, form xxxii., substituting "legacy duty" for "succession duty" (g).*

Power to
female
tenants for
life to
limit rent-
charges
to hus-
bands.
Power to
charge
portions.

XXXII. PROVD ALWAYS and I declare, that it shall be lawful for each female pson hby made [legal or equitable] tenant for life of the sd premes, either before or after, *continue power, p. 579, form xxxiii., substituting "legacy duty" for "succession duty." (g)*

XXXIII. PROVD ALWAYS and I declare, that it shall be lawful for every pson hby made [legal or equitable] tenant for life of the sd premes [*if other provision is made for the younger children of the first tenant for life, say, "other than the sd, first tenant for life"*], either before or after, *&c. continue as in p. 582, form xxxv., mutatis mutandis (a).*

Power to
trustees to

XXXIV. PROVD ALWAYS and I declare that during the

(f) The words in this bracket will be omitted, if the trustees of the term are likewise the general trustees.

(g) Add also forms xxxvi., p. 582, and xxxvii., p. 583, if appropriate, *mutatis mutandis*; and for a form of power to female tenants for life to appoint life interests to surviving husbands, see p. 583.

(a) Add also forms xxxvi., p. 582, and xxxvii., p. 583, if appropriate, *mutatis mutandis*.

minority, and in the case of a female spinsterhood, of (c) ^{manage during minorities. Short form (b).} any tenant for life or in tail [male or in tail] by pchase in possession of the sd hereds and premes, [or any undivided share thof (d)], the sd, *trustees*, or the [survors or] survivor of them, or the exs or ads of such survivor shall take and retain possession or receive the rents and profits of the sd premes, [or of such undivided share thof (d)], and manage the same, with the same powers in that behalf as if they or he were absolutely entled thto: AND SHALL, after paying all outgoings and expenses, apply at their or his discretion the whole or any pt of the net rents and profits of the sd premes, [or undivided share (d)], for the maintenance and education of such minor, with power to pay the same to his or her guardian or guardians for that ppose, without seeing to the application thof, and shall apply the surplus thof, if any, as if the same had arisen from a sale of the sd premes, but so that such surplus or the investmts thof may be applied for the maintenance or benefit of such minor in any subsequent year or years.

XXXV. PROVD ALWAYS and I hby declare that the sd, ^{Clause supplemental to and modifying statutory minority clause.} *trustees by name*, shall be the trees of this my will for the ppses of the 42nd section of the Conveyancing and Law of Property Act, 1881, the powers and provons whof [as hby modified and subjt to the provons herein contd] shall apply to this my will [and so that it shall be obligatory

(b) The full form may readily be adapted from SETTLEMENTS REAL, p. 585, form xli. The power may be omitted in reliance on the Conv. Act, 1881, s. 42, and a clause supplemental to or modifying the Act substituted, see the next form, and p. 585, note (g).

(c) If there is a power of appointment among children or issue, say, “ of any pson who, if of full age, would, for the time being, be beneficially entled under any appointmt under the power [respipe powers] hinbefore contd, or in default of appointmt, in possession to the sd hereds and premes [or any undivided share thof] for any este by pchase.”

(d) The words in these brackets to be inserted where there is a limitation to tenants in common.

on my trees to enter into and continue in the possession or receipt of the rents and profits of the said hereditaments [or any undivided share thereof, as the case may be] in every case thereby provided for]; [And that in addition to the powers of the said Act my trees shall have power, &c., *insert any additional powers required*;] [And that any surplus rents and profits, and the accumulations thereof may during any such minority as is provided for by the said Act be invested in any of the modes in which monies arising from a sale of the said hereditaments are by this my will or by law authorised to be invested;] And that any accumulated fund arising from the rents and profits of the said hereditaments during the minority of any tenant for life or in tail [male or in tail] by purchase shall (without prejudice to the power to apply the same at any time as if the same had been rents and profits of the current year) be held upon the trusts following, that is to say, if the person during whose minority the same shall have been accumulated shall [being a male] attain the age of twenty-one years [or being a female attain that age or marry], then upon trust for such person, his [or her] executors or administrators as personal estate; but if such person [being a male] shall die under the age of twenty-one years [or being a female shall die under that age and without having been married], then upon the trusts and subject to the powers and provisions which would have been applicable thereto if the same had arisen from a sale of the said hereditaments, but so that the whole or any part of such accumulations may at any time be applied for the benefit of any such minor as if the same had been rents and profits arising in the then current year, and any accumulations so arising during the minority of any tenant in tail [male or in tail] by descent shall, without prejudice as aforesaid, be held in trust for him or her or his or her personal representatives, whether he or she shall attain the age of twenty-one years, or being a female marry or not (e).

(e) For variations where the limitations are in fee with an accruer clause or gift over on death under twenty-one, &c., see p. 590, note. As to the form of trust where the settlement contains a shifting clause, see 3 DAY. PROC. 1200.

XXXVI. AND I DECLARE that it shall be lawful for the sd ^{Power to lease for twenty-one years (f).} during his life, and for the sd, *trustees*, or the [survors or] survivor of them, or the exs or ads of such survivor, during the minority of any son [or daughter] of the sd —, who, if of full age, would be entitled to the possession or rect of the rents and profits of the sd hereds and premes [or of any undivided share or shares thof (g)] (a) to demise (b) all or any of the sd hereds and premes [with the exception of the mansion-house and park and grounds and land usually occupied thwith], for any term of years, &c., *as in form XLIII., p. 592.*

XXXVII. AND I DECLARE that it shall be lawful for (c) ^{The same where there are various limitations for life, and in tail or fee.} every person hereby made tenant for life of the sd hereds hereinbefore devised when he [or she] shall be entitled to the possession or the rect of the rents and profits of the same premes, and also for the sd, *trustees*, or the [survivors or] survivor of

(f) This and the following express powers of leasing, sale, &c., may and ought to be omitted, having regard to the Settled Land Act, 1882; see the notes to SETTLEMENTS REAL, pp. 591 *et seq.* For other forms of express powers of leasing, &c., see SETTLEMENTS REAL: p. 593, power to grant building and improving leases; p. 595, power to grant mining leases; p. 596, power to grant leases of easements; p. 597, power to accept surrenders of leases and to take value of surrendered lease into account on granting a renewal; p. 597, to make grants in fee on chief rent; p. 599, power to lay out property for building; p. 601, power to enter into contracts for leases, &c.; p. 601, power to accept leases of easements; p. 602, power to grant licences to copyholders, &c.; p. 611, proviso to be added to powers of leasing, &c., where there is a limitation to tenants in common; all of which forms may be readily adapted to a will. For forms incorporating or extending the powers of the Settled Land Act, see pp. 615, *et seq.* and *infra*.

(g) See note (e), p. 778.

(a) If the will contains several leasing powers, it may be found convenient to continue from this point as follows:—"to exercise over the whole or any pt or pts of the same premes [or according to circles, of any such undivided share or shares thof,] the powers following, that is to say, FIRST, a power to demise, &c., *as in the text*; SECONDLY, a power to demise, &c."

(b) See p. 592, note (f).

(c) For variations, where the form of name and arms clause, p. 564, is used, see p. 592, note (g).

them, or the exs or ads of such survivor, during the minority of any pson who under the limons hinbefore contd, if of full age, would be entled, &c., *continue as in preceding form.*

Commence-
ment of
powers of
sale and
exchange,
enfran-
chisement,
partition,
&c. (d).

XXXVIII. AND I HBY DECLARE that it shall be lawful for the sd, *trustees*, or the [survors or] survivor of them, or the exs or ads of such survivor, during the life of the sd —, with his consent in writing, and after his decease, and during the minority of any son [or daughter] of the sd —, who, if of full age, would, for the time being, be entled to the possion or rect of the rents and profits of the sd hereds and premes [or of any undivided share or shares thof (e)] at the discretion of the sd trees or tree for the time being to &c. (f).

The same
where
there are
various
limitations
for life and
in tail.

XXXIX. AND I HBY DECLARE that it shall be lawful for the sd, *trustees*, or the [survors or] survivor of them or the exs or ads of such survivor, during the life of any pson (g) who, under the limons hinbefore contd shall, for the time being, be beneficially entled to the possion or rect of the rents and profits of the sd hereds and premes as tenant for life, with his [or her] consent in writing, and also during the minority of any pson who, under the limons hinbefore contd, would, if of full age, be for the time being beneficially entled to the possion or rect of the rents and profits of the same premes [(e) or of any undivided share or shares thof] as [tenant for life or] tenant in tail [male or in tail] by

(d) As to the omission of these powers in reliance on the *Settled Land Act, 1882*, see the notes to *SETTLEMENTS REAL*, pp. 603 *et seq.* These forms may be adapted from *SETTLEMENTS REAL*, pp. 606 *et seq.*, with merely verbal alterations. See also the forms of powers to partition, p. 606; to enfranchise, p. 607; to grant easements, p. 608; to purchase easements, p. 608; to renew leases, p. 609, and to raise money on mortgage, p. 609; and power in settlement of undivided share to concur with co-owners in selling, &c., p. 610.

(e) The words in brackets to be inserted where there is a limitation to tenants in common. See the provision at p. 611, for this case.

(f) If there are several powers given to the trustees, it may be convenient to continue as follows:—"To exercise the powers following, that is to say: FIRST, a power to, &c.; SECONDLY, a power, &c."

(g) For the variations where the form of name and arms clause at p. 584 is used, see p. 605, note (g).

purchase, at the discretion of the said trees or tree for the time being, to, &c. (a).

XL. AND I DECLARE that it shall be lawful for the said *donee or donees*, during the lifetime of the said A., or other specified period, [with the consent or concurrence of the person or persons (if any) whose consent or concurrence may be required in that behalf by virtue of the Settled Land Act, 1882, or otherwise] to exercise over or in relation to all or any of the hereds of whatever tenure hereby devised or for the time being subject to the subsisting uses or trusts of this my will, all such powers, &c., as in form LXXI. p. 615.

Clause giving express powers of leasing, sale, &c., by reference to Settled Land Act (b).

XLI. AND I DECLARE that all or any powers contained in this my will for purposes more extended or other than the powers of the Settled Land Act, 1882, whether given to the person or persons in whom such statutory powers shall for the time being be vested or to my trees, and all provisions subsidiary or incidental to or connected with such respective powers shall operate and take effect as far as the case may admit by way of extension and enlargement, &c., as in form LXXIII., p. 616.

Provision as to extension of powers of Settled Land Act (c).

XLII. AND I DECLARE that the leasing powers of the Settled Land Act, 1882, shall be extended so as to authorise leases or grants of the hereds and premises hereby devised, &c., as at p. 617, form LXXV.

Power to grant leases for long terms and reversionary leases (d).

XLIII. AND I DECLARE that no part of the rent arising under any mining lease of any hereds hereby devised or for the time

As to mining rents under

(a) See note (b) to last form.

(b) This form may be used in any case in which the Act may not apply, or there is a doubt as to its application, see p. 591, note. If the statutory powers are extended, the addition in brackets at the end of form LXXI., p. 615, or the next clause, should be added. For a declaration that any express powers given are to operate independently of the Settled Land Act, see p. 615, form LXXII.

(c) See pp. 545, 546, note. For a similar form to precede instead of following the clauses extending the statutory powers, see p. 616, form LXXIV.

(d) See the Act, s. 10. For a power to make grants on chief rent for building purposes, see p. 597. The clause in the text might be extended so as to include this. For provisions as to renewable leases, and fines on renewals, see pp. 617, 618.

Settled
Land
Act (e).

being subjt to the uses or trusts of this my will shall be set aside as capital money under the Settled Land Act, 1882, or otherwise, but the whole thof shall go and be received and applied as rents and profits.

As to sale
or lease of
mansion-
house, &c.,
under
Settled
Land
Act (f).

XLIV. AND I DECLARE that — house afsd, being the principal mansion-house on the sd — este, or any other mansion-house or principal residence for the time being subjt to the uses or trusts of this my will, and the demesnes thof, and the lands usually occupied thwith resply, may be sold, exchanged, or leased under the powers of the Settled Land Act, 1882, without the consent of my trees, or any order of Court [and that such mansion-house or residence may be let on lease or otherwise with or without all or any of the furniture and effects hby settled as heirlooms thwith].

Variation
where
furniture
is settled.

Power to
sell under
Settled
Land Act
for fee
farm
rents (g).

XLV. AND I DECLARE that the power of sale conferred by the Settled Land Act, 1882, and exerciseable in relation to the hereds hby devised shall be extended so as to authorise a sale, &c., *as at p. 618, form LXXX.*

Provision
as to sale
of land
subject to
a charge
under the
Lands Im-
provement
Acts (a).

XLVI. AND I DECLARE that any sale of all or any pt of the sd hereds may be made under the powers of the Settled Land Act, 1882, notwithstanding the existence of any terminable rent-charge on the same or any pt thof, which shall have been created under the provons of any Act for or relating to the improvemt of land, and so that such sale may be made either subjt to such charge or upon the terms of the same being redeemed and paid off out of the pchase-monies or otherwise.

Power to
exchange
for land
in Ire-
land (b).

XLVII. AND I DECLARE that any hereds hby devised or for the time being subjt to the uses or trusts of this my will may be exchanged under the Settled Land Act, 1882, for hereds situate in Ireland.

Power to
sell or

XLVIII. PROV'D ALWAYS and I declare that the power of

(e) See the Act, s. 11, p. 553, note.

(f) See the Act, s. 15, p. 543, note.

(g) See the Act, s. 10.

(a) See p. 619, note (e).

(b) See the Settled Land Act, s. 4 (8).

sale conferred by the Settled Land Act, 1882 [hitherto contd] of or in relation to the hereds hby devised or for the time being subj to the uses or trusts of this my will shall be deemed to authorise a sale or grant, &c., as at p. 620, form LXXXIV.

grant sites for churches, schools, &c. (c).

XLIX. AND I DECLARE that the provons of the Settled Land Act, 1882, shall be extended so as to authorise the investmt of capital monies arising under this my will or the sd Act, &c., as at p. 621, form LXXXV.

Extension of powers of investment under Settled Land Act (d).

L. AND I DECLARE that any capital monies arising under this my will or the exercise of the powers of the Settled Land Act, 1882, in relation to the hereds and premes hby devised or for the time being subj to the uses or trusts of this my will may, in addition to the other modes of investmt or application thof authorised by the sd Act or this my will be applied, &c., as at p. 621, form LXXXVI., *mutatis mutandis*.

Extension of provisions of Settled Land Act as to improvements (e).

LI. AND I DECLARE that every pson hby made tenant for life of the premes hby devised shall keep any arable land forming pt of the sd premes which may for the time being be in his or her occupation clean and in good heart and condon, and that if and so often as such tenant for life shall neglect so to do it shall be lawful for but not obligatory on my trees to enter upon the same land for the ppose of putting the same into good heart and condon, and cleansing the same, and to retain possion thof so long as shall be deemed necessary for such ppose, and to raise and pay all the costs and expenses thby incurred out of the rents and profits of the sd premes.

Tenant for life to keep land in cultivation.

LII. I EMPOWER my trees at the request in writing of any pson hby made tenant for life of the premes hby devised who may be desirous of cultivating or stocking any arable

Power to trustees to lend money to tenant for life for cultivating land.

(c) See p. 619, note (g).

(d) See the Act, s. 21, p. 544, note, and see also p. 612, form LXX, and the next form.

(e) See p. 621, note (b). For a power to the tenant for life to charge the inheritance with the expenses of improvements, see p. 622, form LXXXVII.

or pasture land for the time being in his or her occupation, to advance to him or her out of any capital monies subjt to the trusts of this my will the whole or any pt of the sum which in the opinion of my trees shall be sufficient for that ppose, but so that the repaymt of such sum shall be secured by a mortgage of the life interest of such tenant for life in the premes hby devised togr with a policy or policies of assurance on his or her life or in some other mner to the satisfon of my trees [with power to my trees to raise on mtge of the sd premes hby devised all or any monies which may be required for such ppose without any necessity for any mtgee to enquire into the propriety of raising the same or the amount required].

Devise of copyholds on trusts corresponding with uses of freeholds.

LIII. I DEVISE all the hereds of copyhd or customary tenure [situate in the parishes of, &c., in the county of, &c.,] which I may be possessed of or entled to or have power to dispose of at my decease, except what I otherwise dispose of by this my will, or any codicil hto, To THE USE of the sd, *trustees*, their hrs and assigns, according to the customs of the several manors of which the same shall resply be holden, upon such trusts, and with and subjt to such powers and provons as shall correspond with the uses, trusts, powers, and provons hinbefore decl'd and contd concerning the freehd hereds hinbefore devised, or as near thto as the different tenures and other circes will admit, but not so as to increase or multiply charges or powers of charging.

Bequest of leaseholds on trusts corresponding with uses of freeholds (f).

LIV. I DEVISE AND BEQUEATH all the leasehd hereds [situate in the respive parishes of, &c., in the county of, &c.], [whether held for years, or for a life or lives], which I may be entled to, or have power to dispose of at my decease, except what I otherwise dispose of by this my will, or any

(f) For a form of trust of mining plant, see p. 625, and for forms of trusts of chattels as heirlooms, see pp. 626, 627, forms XCII. and XCIII., which may readily be adapted to a will. The following power to the trustees to give articles settled as heirlooms to the tenant for life is sometimes useful :—

Power to trustees to give heir-

“PROVD ALWAYS and I empower my trees in their absolute discretion at any time or times within twenty-one years after

codicil hto, Unto the sd, *trustees*, their exs, ads (g), and assigns, for all the term este and interest therein resp'y, which I may have or can dispose of by will, UPON TRUST that the sd, *trustees*, or the [survors or] survor of them or the exs or ads of such survor, shall by and out of the rents, &c., *continue as at p. 624, form xc., mutatis mutandis.*

LV. I DEVISE the — este, of which I am now tenant for life under the limons of an indre, &c., or, "the will, dated, &c., of —," to the uses, upon the trusts, and with and subj't to the powers and provons herein decl'd and cont'd concerning the hereds and premes hinbefore devised in strict settlem't (a): AND I DIRECT that the devise lastly hinbefore cont'd shall take effect under the doctrine of election, and shall thby bind every son [child] of mine who shall, under the limons of the sd indre, or "will," become tenant in tail male [or in tail], in posson of the — este, who shall accordingly, at the request in writing and to the satisfon of the sd, *trustees*, or the [survors or] survor of them, or the exs or ads of such survor, and at his [or her] own cost, execute, complete, perfect, and do all such assurances, deeds, instrumts and acts as may be necessary for evidencing such election, and giving effect to the devise of the sd — este hinbefore cont'd: AND I DECLARE that if any son [child] of mine shall refuse or neglect to comply with any such request in writing of the sd trees or tree, or shall otherwise fail to execute, complete, perfect, or do such assurances, deeds, instrumts or acts as afsd, or any of them, then my will shall

Clause
putting son
to election
to resettle
family
estate.

my death to give any of the sd articles and effects hby settled, which my trees may consider not suitable to be kept or enjoyed as heirlooms, to any pson of full age for the time being entitled under this my will to the actual posson or rect of the rents and profits of the sd hereds hby devised for his or her absolute benefit."

looms to
tenant for
life.

(g) See above, p. 624, note.

(a) If the will does not contain any devise in strict settlement, set out the uses.

be construed, and the rights of all persons claiming hereunder be determined in all respects, as if such son [child] had died immediately before me, without having been married.

Clause as
to resi-
dence (b).

LVI. AND I DECLARE it to be my parlar wish and request, but without imposing any legal obligation, that the person for the time being entitled to the possession of my mansion house at —, if of full age, will make it his or her principal place of residence.

MISCELLANEOUS CLAUSES.

Power to
executors
to complete
contracts
for sale or
purchase of
land (c).

I. I AUTHORISE my executors to complete or rescind any contract for sale or purchase of hereditaments of any tenure which I may have entered into, and which may at my death be uncompleted, and to make, insist upon, waive, or submit to any requisitions or objections as to title or evidence of title or otherwise, whether tenable or not, and either unconditionally or upon terms, and to make any arrangements as to giving or receiving compensation for error or misstatement in the particulars or otherwise, and to accept any title not strictly marketable either with or without receiving an indemnity, and to give an indemnity against defects in title by charge upon, or otherwise out of any part of my estate, and generally to act in all respects in relation to any such sale or purchase, as if they were selling or purchasing as beneficial owners, without being responsible for loss: [And I direct that all purchase-money or compensation payable upon any such purchase, and the costs of and incident to the com-

(b) A compulsory clause of this nature is very objectionable; and it is invalidated by the Settled Land Act, 1882, so far as it would interfere with the powers of leasing and sale under the Act, see p. 694, note.

(c) It is desirable in order to avoid questions as to the devolution of the legal estate in land contracted to be sold, having regard to the Conv. Act, 1881, s. 30 (see Vol. I., p. 445, note (b)), to devise it to the executors, and to give them the powers in the text.

pletion of any such sale or pchase, shall be paid out of my residuary personal este, and that the hereds so pchased shall be included in the general devise of my real este hinbefore contd and be conveyed accordingly and the proceeds of any such sale shall be deemed pt of my general personal este].

II. AND WHAS — is indebted to me in the sum of £——, for which I hold his promissory note: Now I hby empower my exor to postpone the calling in of such debt, or any other debt which may be owing to me from the sd — at the time of my decease, for such period as my exor may think proper, without taking security for the same, and without being responsible for loss.

Power to continue loan.

III. PROVD ALWAYS and I hby declare that notwithstanding anything hinbefore contd it shall be lawful for my trees at any time in their absolute discretion, with the consent in writing of the sd A., to sell out and dispose of all or any pt of the sd trust premes, and apply the]proceeds thof in the pchase in their names from Governmt or any public company of an annuity for the life of the sd A., and such annuity shall be paid to him in the same mner as is hinbefore directed with respect to the income of the sd trust premes which shall have been so applied in the pchase thof.

Power to purchase annuity for tenant for life (e).

IV. I AUTHORISE my trees to apply any pt or pts of the capital or income of my este, or the proceeds thof, for the redemption or discharge of any quit or other rents, rent charges, or annuities, whether perpetual or terminable, or other charges or incumbrances affecting my real or personal este or any pt or pts thof at such time upon such terms and in such mner as they may think expedient, and whether as

Power to discharge incumbrances and to redeem rent-charges, &c., affecting estates (f).

(e) This power is intended for a case in which the income of a settled fund may be inadequate for the maintenance of the tenant for life and his family.

(f) See the provisions in the Conv. Act, 1881, s. 45, for the redemption of perpetual rentcharges, quit rents, &c.; and the provisions in s. 5, for the discharge of incumbrances upon a sale of the land; and the provisions of the Settled Land Act, 1882, ss. 5, 24, enabling incumbrances to be shifted to other parts of the estate on a sale, &c.; and see also the provision in p. 619, with respect to charges under the Lands Improvement Acts.

incident to or connected with a sale of the ppty subj to any such charge or incumbrance or any pt of such ppty or not, and any rent-charge, annuity, or quit or other rent or other periodical paymt (whether perpetual or for a fixed term, or for life or lives, or otherwise) which may at my decease be charged or secured upon or payable out of any pt of my este, may be redeemed or discharged upon the terms of a gross sum or sums of such amount as may be agrd being paid as the conson for such redemption or discharge, or upon such other terms as my trees may think fit.

Power to
carry on
farms.

v. I EMPOWER my trees in their absolute discretion to take and retain possion for such period-as they shall think fit of any farm or farms forming pt of my residuary este, and to manage and cultivate the same, and for that ppose to employ such pt of the capital or income of my residuary este as they shall think fit, and to hire and engage bailiffs, agents, labourers, and workmen, and to employ the existing live and dead stock (if any), and buy and sell live and dead stock, and generally to act in all matters relating to such farm or farms as if they were the absolute beneficial owners thof: And my trees shall be free from all responsibility and be fully indemnified out of my residuary estate in respect of any loss arising in relation thto, and shall have power to determine what pt of the money employed in or arising from the carrying on of such farm or farms is capital and what pt income, and such determination shall be binding and conclusive on all psons interested under this my will or any codicil hto.

Power to
employ
agents, &c.

VI. I AUTHORISE my trees to employ any agents, collectors, clerks, accountants, or managers, for the ppose of getting in rents or debts, or managing, or keeping or making up the accounts of my este, or otherwise in relation to the execution of the trusts of my will, at such remuneration, either by way of poundage or salary or otherwise, as they shall think fit.

Power to
appoint
agents to

VII. I EMPOWER all or any of my trees, or exs, or any sole tree or exor for the time being of this my will who

may be resident in the United Kingdom, to appoint any pson or psons (whether a tree or trees or exor or exs of my will or not) to act as their or his agent or attorney, or agents or attorneys, or on their or his behalf in — or elsewhere abroad, for the ppose of selling, converting, collecting, getting in, and executing and perfecting assurances of, or managing or cultivating any of my ppty real or personal which may be abroad, or otherwise administering my este in — or executing the trusts of my will in relation to any such ppty, with such provons in that behalf as may be thought fit, and with power to appoint substitutes, without being responsible for any loss thby arising; and I give the like power to any trees or tree or exs or exor who may be resident abroad to appoint any pson or psons to act for them or him in any pt of the United Kingdom or elsewhere without being responsible for loss.

get in or
manage
property
abroad,
&c.

VIII. I DECLARE that if any pson shall [without the consent in writing of my exs, which it shall be in their uncontrolled discretion to give or refuse (g),] dispute the validity of, or refuse to confirm this my will, or any codicil hto, such pson shall forfeit all benefits hby, or by any codicil hto given to him or her, and the same not being residuary or a share of residue shall fall into my residuary este, or being residuary or a share of residue shall go to the other psons or pson entled to such residue as if the pson incurring such forfeiture had not been included in the residuary gift.

Condition
not to
oppose
probate (a).

IX. I DECLARE that in case any question or dispute shall arise as to the construction of my will, or any codicil hto, my exs or trees may cause a proper case to be laid before two or more counsel for the determination of the same, and their determination shall be final and binding on all psons, and that notwithstanding the pendency of any action or other proceedings in which such question or dispute could properly be determined; And I declare that every pson

Clause
binding
legatees to
abide by
opinion of
counsel.

(g) The words in this bracket should be inserted, otherwise it may be difficult to resist the probate of a forged codicil.

(a) See 2 Jarn. on Wills, p. 58 *et seq.*

claiming under my will or any codicil hto, upon the request in writing of my exs or trees, shall execute and do, at the expense of my este, all such instrumts, acts, and things as may be proper for carrying such determination into effect; and in the event of the wilful neglect or refusal of any such pson to do so upon such request as afsd, or if any such pson shall institute or procure any other pson to institute any action or other legal proceedings for determining any such question or dispute as afsd, then I declare that he or she shall forfeit all benefits, &c., as in last form.

Trust for indemnifying trustees of testator's marriage settlement in respect of breaches of trust.

x. *Recite breach of trust committed by trustees of testator's marriage settlement*: Now I HBY DECLARE that the sd trust premes constituting or representing my residuary este shall be held upon and for such trusts and ppses as shall render the same a good and sufficient indemnity to the sd trees of my sd marre settlemt, and each and every of them, and all past and future trees of the sd settlemt, and their resptive hrs exs and ads, estes and effects, against all actions, suits, proceedings, losses, costs, charges, expenses, liabilities, claims, and demands whatsoever for or on account of any of the acts and dealings hinbefore referred to, or any other acts or dealings of the trees or tree of the sd settlemt up to the time of my decease; And that the same premes or any pt thof may for effectuating such indemnity be dealt with and resorted to in such mnner as the sd present or any past or future trees or tree of the sd settlemt, or their or his hrs exs or ads, or any of them, may require, and that such trust for the ppose of indemnity shall be deemed the first and paramount trust and disposition hby made of the sd premes; And for further effectuating such indemnity I declare and direct that the psons beneficially interested in the sd trust premes under this my will, or any of them, their or any of their exs ads and assigns, shall be bound under the doctrine of election to adopt and confirm all the acts and dealings of the sd trees or tree of my sd marre settlemt in the exercise of the trusts thof up to the time of my decease, and especially, *refer to recited breach of trust*, and at the request in writing and to the satisfon of my exs or

trees, and within such time as they shall appoint, at the cost of my residuary este, to execute and do all such instrumts and acts as may be by them reasonably required in that behalf, and for indemnifying and releasing all and every the present and past and future trees and tree of the sd settlement, and their respive hrs exs and ads estes and effects in respect of all such acts and dealings, and otherwise giving effect to the indemnity and protection intd to be hby provd as afsd; And I declare that if any pson so beneficially interested as afsd, or his or her exs ads or assigns, shall refuse or neglect to comply with the request in writing of my exs or trees in that behalf, then my will shall be construed, and the rights of all psons claiming thereunder shall be determined in all respects as if the pson so beneficially interested had died before me without leaving issue, AND SUBJT to and after answering the several trusts and ppses afsd upon trust, &c.

XI. I REQUEST the sd —, but not so as to impose any legal obligation on him, or to create any trust or equity in favour of any other pson, to, &c., *e.g.*, “to carry out my wishes expd in a letter addressed to the sd, *legatee*, and deposited with this my will, which letter I expressly declare not to be testamentary, and that whether the contents or existence thof shall or shall not be communicated to the sd, *legatee*, during my lifetime.” Precatory trust.

XII. I DECLARE that my trees shall during the term of twenty-one years to be calculated from my death [in case my sd wife shall so long live,] out of the annual income of the sd trust premes yearly, and every year raise the sum of £—— [(c) and shall accumulate the same at compound interest by investing the same and the resulting income thof Trust for accumulation (b).

(b) The Thellusson Act authorises accumulation for twenty-one years from the death of the testator; see p. 577, note.

(c) If the sums are not to be accumulated at compound interest, in lieu of the part bracketed, say, “and shall hold and apply the sums so raised and the investmts thof as pt of the capital of the sd trust premes.”

in any investmts hby authorised for the sd trust premes, with power from time to time to vary such investmts at discretion until the termination of the sd period of accumulation, and shall then hold and apply the accumulated fund as pt of the capital of the sd trust premes].

Provision
as to man-
sion or
residence
with re-
ference to
Settled
Land
Act (d).

XIII. I HBY DECLARE that [the sd mansion-house, or] any residence or dwelling-house, and any lands usually occupied thwith, which may form part of the hereds hinfere devised, or for the time being held on the trusts of this my will, may be sold, exchanged, or leased under the powers of the Settled Land Act, 1882, [or any powers given by this my will by reference to the sd Act, or by way of extension of the powers thof, without the consent of my trees or any order of Court].

As to
mining
rents under
Settled
Land Act.

XIV. I DECLARE that no pt of the rent arising under any mining lease of any hereds for the time being subj to the uses or trusts of this my will shall be set aside as capital money under the Settled Land Act, 1882, or otherwise, but the whole thof shall go and be received and applied as rents and profits.

As to
notices
under
Settled
Land
Act (e).

XV. I HBY DECLARE that any powers [of leasing, or accepting surrenders of leases, or making grants in fee for the ppose of building or improvemts,] or, "all the powers," which are conferred by the Settled Land Act, 1882, [or by these presents by reference to or extension of the powers of the sd Act] in relation to the sd hereds and premes hby devised [or for the time being subj to the uses or trusts of this my will] may be exercised without giving any notice of the intention to exercise the same to any tree or to the solor of any tree of this my will; [And further that it shall be lawful for my trees at any time by deed to dispense in any case, and either generally or with reference to any parlar class of cases, and either indefinitely or for a limited time,

(d) See the Act, s. 15, and p. 543, note. This clause should be inserted (if according to the intention) whenever the powers of the Act are relied on in the case of a principal or only residence, although not a mansion in the popular sense.

(e) See the Act, s. 45, and p. 545, note.

with the necessity for giving any such notices as aforesaid, but my trustees may at any time by deed revoke or annul such dispensation to any extent they may think fit].

XVI. THE BREVIA TE or headings in the margin of this my will [codicil] shall not be taken as part thereof or in any manner affect the interpretation or construction thereof.

Marginal
breviate
not to form
part of
will (f).

TRUSTEE CLAUSES.

I. I HEREBY appoint the said, *trustees by name*, to be trustees of this my will for the purposes of the Settled Land Act, 1882, [if the will gives powers by reference to the Act, or by way of extension of the statutory powers, add, and of any powers conferred by this my will by reference to or by way of extension or enlargement of the powers of the said Act].

Appoint-
ment of
trustees
under
Settled
Land
Act (g).

II. I DECLARE that a sole trustee for the time being of this my will shall be competent to act for all the purposes of the Settled Land Act, 1882, and this my will, including the receipt of capital money and of notices pursuant to the said Act.

Sole trustee
authorised
to act for
purposes of
Settled
Land Act
(g).

III. I DECLARE that the receipt of my trustees for the purchase-moneys of any property hereby directed or authorized to be sold,

Trustees'
receipt
clause (h).

(f) To be inserted at end of will or codicil when paragraphed with marginal headings.

(g) See p. 630, note (c). The words bracketed should be added where appropriate, as the trustees would not, it is conceived, otherwise become trustees under the Act, except for the purposes of the powers given by the Act itself.

(h) The receipt clause, the power to appoint new trustees, and the trustees' indemnity and reimbursement clauses may and should now generally be omitted, in reliance on the statutory provisions referred to in p. 488, note (f); and the clauses supplemental to the statutory provisions as to the appointment and indemnity of the trustees, forms v., and XII, *infra*, substituted. The full clauses in the text, although retained, can in future be very rarely required; but it may occasionally be proper to insert the full clauses if the testator owns

or for any other monies, stocks, funds, shares, or secs, paid delivered, or transferred to them under this my will, or any codicil hto, or in the execution of the trusts or powers thof, shall effectually discharge the pson or psons paying, delivering, or transferring the same thfrom, and from being concerned to see to the application, or being answerable for the loss or misapplication thof.

Power to
appoint
new trus-
tees.
Variations
for several
sets of
trustees
and other
circum-
stances (a).

IV. PROVID ALWAYS, and I hby declare that if and so often as the sd [several] trees hby constituted, or any of them, shall die in my lifetime, or if they or any of them, or any tree or trees appointed under this present power or by a court of competent jurisdiction, shall die after my decease [or remain out of the United Kingdom for more than twelve calendar months] or desire to be discharged, or refuse or become unfit or incapable to act, it shall be lawful (b) for the surviving or continuing trees or tree [of the class in which such vacancy or disqualification shall occur,] (and for this ppose every refusing or retiring tree shall, if willing to act in the execution of this power, be considered a continuing tree,) or for the acting exs or exor, or ads or admor, of the last surviving or continuing tree [of the same class] (c) to appoint a new tree or new trees in the place of the tree or trees so dying [or remaining out of the United Kingdom], or desiring to be discharged, or refusing or becoming unfit or incapable to act as afsd ; And upon every such appointmt the number of trees may be increased or reduced, [but not to less than two]. And upon every such appointmt the trust ppty (if any) [then vested in the trees or tree of the

property situate abroad, where there may be no enactments corresponding to those referred to.

(a) See the last nota. As to appointing several sets of trustees, see p. 630, note (d), and as to the persons in whom the power should be vested, see p. 631, note.

(b) Sometimes the power of appointing new trustees is given to the tenant for life ; if this is intended, insert here, " for the sd, *tenant for life*, during his life and afterwards."

(c) For variations where the power is vested in or exercisable with the consent of the beneficiaries, see form VI.

class in which such vacancy or disqualification shall occur, or in the hrs exs or ads of the last survivor of such trees] shall as soon as circes will admit be vested in the trees [or tree] (d) for the time being [of the same class], but every new tree may, as well before as after the trust ppty shall have been so transferred, execute all the trusts or powers of this my will [trusts or powers in respect of which he shall be so appointed a tree,] as fully and effectually as if he had been hby constituted a tree.

V. PROVD ALWAYS, and I hby declare that it shall be lawful for my trees to appoint any psons, not being less than two in number, of whom any one or more of the general trees of this my will may be one or more, to be trees of, *here describe the property as*, "such pt of the sd trust premes as shall for the time being be situate in New Zealand," or, "the share or shares of any daughter [child] of mine in the trust premes," and upon every such appointmt the trust ppty, or, "share or shares," in respect of which such trees shall be so appointed shall, as soon as circes will admit, be transferred so as to be vested in them upon the trusts herein decl'd concerning the same, and the trees so appointed may as well before as after such transfer act in the execution of the trusts or powers of my will so far as regards the trust ppty, or, "share or shares," of which they shall be appointed trees as fully and effectually, and all the provons of my will, including the provons as to the appointment of new trees, shall apply to them as if they had been originally hby appointed trees of the same trust ppty, or, "share or shares."

VI. I DECLARE that the statutory power of appointing new trees of this my will shall be vested in my sd wife during her life, and after her decease in the sd, *tenant for life*, during his life, or, "in the sd, *tenants for life*, during their

Power to
appoint
special
trustees of
particular
property
(c).

Clause
supple-
mental to
statutory
power of
appointing

(d) If the words, "but not less than two," above bracketed are inserted, the words, "or tree," will, of course, be here omitted.

(e) When power is given to appoint special trustees of any share, it will probably be desirable to insert also the power to appropriate specific parts of the property in satisfaction of any of the shares. See p. 701, form IV.

new trustees with variations (f).

The same. Another form (f).

joint lives, and the survivor of them during the life of such survivor."

VII. I DECLARE that the statutory power of appointing new trees of this my will shall be exerciseable with the consent of my sd wife, during her life, and after her decease of the sd, *tenant for life*, during his life, or, "of such of my sd sons as shall for the time being be of full age," or, "of the pson of full age, if any, for the time being entled to the income of the sd trust este;" And afterwards, or, "in case and so long as there shall be no such pson," at the discretion of the psons or pson in whom such statutory power shall for the time being be vested.

The same where there are several sets of trustees.

VIII. I DECLARE that the power of appointing new trees of this my will shall be vested in the surviving or continuing trees or tree for the time being of the class in which the vacancy or disqualification shall occur, or in the acting exs or exor, ads or admor, of the last surviving or continuing tree, or in the last retiring trees or tree of the same class.

Power to delegate trusts to resident trustees(g).

IX. I AUTHORISE my trees from time to time to delegate to such of the sd trees as may for the time being be resident in England, the execution of the trusts and powers of this my will, as regards ppty situate in England, and to such of the sd trees as may for the time being be resident in New Zealand, the execution of the afsd trusts and powers as regards ppty situate in New Zealand, and from time to time to revoke such delegation, and for that ppose to execute such powers of attorney or other instrumts as may be proper without being responsible for loss: And I declare that no pchaser or other pson dealing with any trees or tree to whom the execution of any of such trusts or powers may

(f) See p. 490, note. In the common case where the power is to be in the continuing trustees without any restriction, the statutory provisions are sufficient; as to the propriety of so vesting the power where the Settled Land Act applies, see p. 631, note.

(g) See also p. 786, form VII., and p. 793, form IV.

have been delegated shall be bound to inquire whether such delegation remains in force.

X. AND I DECLARE that the net proceeds of sales, and rents, income, or other monies realised from my ppty in New Zealand, which shall not be required for paymt of debts, or expenses, or other ppses in New Zealand, shall from time to time be remitted to my trees in England, to be applied by them upon the trusts of this my will.

Declaration as to monies received by resident trustees.

XI. PROVD ALWAYS and I hby declare that my trees [the several trees of this my will] shall be resply chargeable only for such monies, stocks, funds, shares, and secs as they shall resply actually receive, notwithstanding their resply signing any rect for the sake of conformity, and shall be answerable and responsible only for their own acts, rectis, omissions, neglects, and defaults resply, and not for those of each other, nor for any banker, broker, auctioneer [attorney], or other pson with whom, or into whose hands, any trust monies or secs shall be deposited or come, nor for dispensing wholly or partially with the investigation or production of the lessor's title as to leasehds, nor for otherwise accepting less than a marketable title on [the pchase, or taking in exchange, or on partition or enfranchisemt, or on] lending money on the secy of any hereds, [nor for any defect in title or value of any hereds pchased or taken in exchange or on partition or enfranchisemt or on mtge,] nor for the insufficiency or deficiency of any stocks, funds, shares, or secs, nor for any other loss, unless the same shall happen through their own wilful default resply, and also that the sd [several] trees or tree for the time being may reimburse themselves or himself resply, or pay or discharge out of the sd trust premes all expenses incurred in or about the execution of the trusts or powers of this my will.

Clause for indemnity and reimbursement of trustees. Variations for several sets of trustees and other circumstances (a).

XII. I DECLARE that my trees shall not be answerable or accountable any one or more for the others or other of them, and by no means for involuntary losses, and that they resply

The same. A short form.

(a) See p. 488, note (f).

shall be entled to be reimbursed out of the trust premes all costs, damages, and expenses incurred or sustained in the execution of the trusts afsd.

Clause supplemental to statutory indemnity of trustees (b).

XIII. I DECLARE that in addition to the ordinary indemnity given by law to trees, my trees may dispense wholly or partially with the investigation or production of the lessor's title as to leasehds or otherwise accept less than a marketable title on [the pchase or taking in exchange or on partition or enfranchisemt or] lending money on the secy of any hereds, and shall not be liable for any loss occasioned thby.

Power to executors or trustees being solicitors or professional men to charge for business done.

XIV. AND I DECLARE that the sd — [and every other tree for the time being of this my will being a solor or engaged in any other profession or business] shall be entled to make and receive all such charges and emolumts for business whether of an ordinary professional or any other character (c) done by him in relation to the administration of my este or the execution of the trusts of this my will, or any codicil hto, as he would have been entled to make and receive in respect of such business, if he had not been an [exor or] tree.

Addition to last clause enabling professional trustee to be paid by a salary. Declaration as to devolution of trustees' powers (d).

XV. AND FURTHER that he may agree with the other trees or tree for the time being to receive and be paid in respect of all or any parlar pt of such business in lieu of the ordinary professional charges, a salary of such amount and during such period as may be agrd upon.

XVI. I DECLARE that all the powers, authorities, and discretions hby expd to be vested in or given to the trees of this my will by that or any other description shall be vested in and exerciseable by the sd trees hby appointed, and the survivor of them [and the exs or ads of such survivor] or other

(b) See p. 491, note.

(c) These words are inserted to meet *Harbin v. Darby*, 28 Beav. 325.

(d) When this clause is inserted the expression "my trees," may be used throughout the will as in the above forms. See also forms i. and ii., as to trustees under the Settled Land Act; and see p. 493, note (d).

the trees or tree for the time being of this my will, and that a sole tree for the time being shall be competent to act for all pposes [*where there is more than one set of trustees, add,* and that unless the contrary is expd or implied by the context, any reference herein contd to the trees or tree hereof shall be deemed to apply to the general trees or tree and not to the trees or tree of the sd term of — years, or as the case may be].

APPOINTMENT OF EXECUTORS, &c.

I. I APPOINT my son D. sole exor, or, "my wife C. sole extrix" of this my will, or, "A., of, &c., B., of, &c., and C., of, &c., exs of this my will."

Appointment of executor or executors.

II. I APPOINT A., of, &c., B., of, &c., and C., of, &c., exs and trees of this my will.

Appointment of executors and trustees.

III. I APPOINT my wife C. [so long as she shall remain unmarried] and my son D. extrix and exor [and trees] of this my will [and I direct that in the event of my sd wife marrying again, the trust este shall be transferred so as to be vested in the other trees or tree for the time being].

The same, including wife while unmarried.

IV. I appoint A., B., and C. exs [and trees] of this my will, and in case any one of them shall die in my lifetime or shall renounce probate thof, I appoint D. an exor in his place [and in case any one of them shall die in my lifetime or decline to act as tree, I appoint the sd D. a tree in his place, and I direct that the trust este shall in such case be transferred so as to be vested in the sd D. jointly with the other trees or tree for the time being].

The same, with substitution.

V. I APPOINT A. and B., and also my son C., in case and when he shall attain the age of twenty-one years, exs of this my will; [I appoint the said A. and B. trees of this my will, and I also appoint the sd C. in case and when he shall attain the age of twenty-one years to be an additional tree

The same, including son on attaining twenty-one.

thof, and I direct that the trust ppty shall thereupon be transferred so as to be vested in him jointly with the other trees or tree for the time being].

Appoint-
ment of
legatees
special
executor,
as to pro-
perty be-
queathed
to him (e).

Power to
executors
to compro-
mise, &c.
(f).

VI. I APPOINT the sd A. exor of this my will as to the sd [bond debt] and premes hinbefore bequeathed to him, and I direct that the expense of taking out the limited probate in respect thof shall be borne by him, and I appoint C. and D. general exs of this my will.

VII. I AUTHORISE my acting exs or exor for the time being to pay any of my debts or any claims upon my este upon any evidence which they or he shall think sufficient, and to accept any composition or any secy, real or personal, for any debt due to me or my este, and to allow any time for the paymt of such debt as they or he shall think fit, and also to compromise, compound, or submit to arbitration all debts, accounts, claims, or things whatsoever belonging or relating to my este, and for any of the pposes afsd, to enter into, give, execute and do such agreemts, instrumts of composition, reles, and things as they or he shall think expedient, without being responsible for loss.

Appoint-
ment of
guardians.

VIII. I APPOINT my sd wife during her life [widowhood] and after her decease [or second marre] the trees or tree for the time being of this my will to be the guardian or guardians of my infant children during their respive minorities.

The same.
Another
form (g).

IX. I APPOINT my sd wife during her life, and after her death such pson or psons as she shall by will or codicil appoint, and in default of such appointmt or after the death

(e) If the testator's business is bequeathed to trustees who are appointed special executors, the following power should be added:—"AND I AUTHORISE the sd, *trustees*, to pay any debts or claims in respect of the sd business, &c.," continue as in next form, saying, where necessary, "in respect of the sd business."

(f) This may generally be omitted (except in such a case as is mentioned in the last note), having regard to the large powers given to executors and trustees by the Conv. Act, 1881, s. 37.

(g) The father's testamentary power of appointing a guardian may be delegated; *Re Parnell*, L. R. 2 P. & D. 379.

or refusal to act of the pson or all the psons so appointed, then the trees or tree for the time being of this my will, to be the guardian or guardians of my infant children during their respive minorities.

TESTIMONIUM AND ATTESTATION.

I. IN WITNESS whof I, the sd —, have to this my will, Testimo-
nium of
will. [to each sheet of this my will] [contained in — sheets of
paper] (a) [executed in duplicate, or, "triplicate"] set my
hand this — of —.

II. IN WITNESS whof I, the sd —, have hereunto [to The same
of codicil. each sheet of this codicil,] [contd in — sheets of paper] (a)
set my hand this — day of —.

III. SIGNED by the sd testor as [a codicil to] his last will Attestation
of will or
codicil. in the presence of us, present at the same time, who, in his
presence and at his request and in the presence of each
other, have hereunto subscribed our names as witnesses.

IV. SIGNED by the sd testor in the joint presence of us The same.
Short
form. who in his presence and that of each other have hereunto
subscribed our names as witnesses.

V. SIGNED by the sd testor on the day of and shortly after Attestation
of will
made on
day of
testator's
marriage
(b). his marre with — as his last will in the presence of us,
&c., *as above*.

VI. SIGNED by the sd testor as his last will, the same
having been first read over to him in our presence, with his
mark, (c) in the presence of us, &c., *as above*. Attestation
where tes-
tator is
blind or
illiterate.

(a) The testator should sign each sheet, though this is not essential; the attesting witnesses usually sign the last sheet only.

(b) The object of this special attestation of course is to record the fact that the will was not made *before* the marriage, so as to be thereby revoked.

(c) The testator's hand may be guided in making his mark or signature.

Attestation where another person signs for testator. VII. Signed by, *amanuensis*, with the name of the said testator as his last will in his presence and by his direction (d) in the presence of us, &c., *as above*.

Attestation where there have been alterations or erasures (e). VIII. SIGNED, &c., *as above*, the interlineation between the — and — lines of the — page, and the alteration in the — line of the — page, and the erasure on the — line of the — page having been previously made [*or*, the words “—” having previously been erased, *or*, substituted for the words “—” in the — line, *or*, interlined between the — and — lines of the — page].

(d) The *amanuensis* may be one of the attesting witnesses, and must sign the testator's name.

(e) If the alterations are not noticed in the attestation clause, the testator and the attesting witnesses should place their initials opposite or against each alteration, which is sufficient to make them valid; *Re Blewitt*, 5 P. D. 116.

PRECEDENTS.

I.

OUTLINE WILL shewing the GENERAL ARRANGEMENT PREC. I. of the clauses.

Commencement, p. 655; *Confirmation of marriage settlement*, p. 656; *Specific bequests of furniture and personal effects, &c.*, pp. 659, *et seq.*; *Other specific legacies*, p. 656; *Bequests of leaseholds*, p. 663; *Bequest of business*, p. 666; *Specific devises*, p. 690; *Management and maintenance, &c., clauses as to specifically devised real and leasehold property*, pp. 748, *et seq.*; *General legacies*, p. 674; *Bequests of annuities*, p. 684; *Minority clauses as to legacies to infants*, pp. 741, *et seq.*; *Gifts of residue*, p. 696; [*Trusts for conversion, with power to postpone conversion and subsidiary clauses*, pp. 699, *et seq.*; *Trusts for payment of debts and legacies*, p. 708; *And investment*, pp. 705, *et seq.*;] *Beneficial trusts of residue*, pp. 707—741; *Maintenance, accumulation, and advancement clauses*, pp. 741, *et seq.*; [*Powers of sale and conversion of real and personal estate where there is no previous trust for conversion, and provisions for investment of proceeds and subsidiary clauses*, p. 700;] [*Declaration of trust of income until conversion and provision as to income of wasting property*, pp. 704, *et seq.*;] *Powers of managing and leasing real and leasehold estates*, pp. 751, *et seq.*; *Power to mortgage*, p. 703; *Power to partition*, p. 755; *Power to purchase land*, p. 757; *Power to allot specific property in satisfaction of legacies or shares of residue*, p. 701; *Power to wind up or carry on business*, pp. 667, *et seq.*; *Various powers*, pp. 702, *et seq.*, 759, *et seq.*; *Declaration that interests given to females shall be without anticipation*, p. 739; *Miscellaneous pro-*

PREC. I. — *visions, p. 784; Clauses as to Settled Land Act, pp. 755, and 790; Power to trustees to determine questions, p. 760; Provisions as to appointment of new trustees, and indemnity of trustees, if required, pp. 791, et seq.; Power to professional trustees to charge for business done, p. 796; Declaration as to devolution of trustees' powers, p. 796; Appointment of executors and trustees, p. 797; Appointment of trustees under Settled Land Act, p. 791; Sole trustee authorised to act for purposes of Settled Land Act, p. 791; Special powers to executors, pp. 784, et seq., 798; Appointment of guardians, p. 798; Testimonium, p. 799.*

*Testator's
Signature.*

Attestation, p. 799.

II.

PREC. II. — *WILL making WIFE UNIVERSAL DEVISEE and LEGATEL, and appointing her EXECUTRIX and GUARDIAN.*

General devise and bequest.

Appointment of executrix and guardian.

As to devise of trust and mortgage estates.

Commencement, p. 655. I DEVISE AND BEQUEATH all the este and effects whatsoever and wheresoever, both real and personal, to which I may be entled, or which I may have power to dispose of at my decease, unto and to the use of my wife B. [her hrs, exs, ads, and assigns,] absolutely (a), and I appoint her sole extrix of this my will, and guardian of my infant children during their respive minorities. Is WITNESS whof I have hereunto set my hand this — day of —.

(a) It was usual to insert a separate devise to the executors of estates vested in the testator as a trustee or mortgagee, to prevent questions and difficulties as to the devolution of such estates, and for convenience in future dealings, but by the Conv. Act, 1881, s. 30, trust or mortgage estates of inheritance, or *pur autre vic* limited to the heir (whether in freeholds or copyholds) which are vested in any person solely, devolve on his death "notwithstanding any testamentary disposition" on his personal representatives or representative in the same manner as a chattel real, and may be disposed of and dealt with accordingly. A devise of such estates is therefore now unnecessary and ineffectual, and should not be inserted. As to the power of the executor to assent to such a devise under the late Act, see p. 657, note (b).

III.

WILL giving residuary REAL and PERSONAL ESTATE PREC. III.
absolutely, SUBJECT to LEGACIES and ANNUITIES
CHARGED or NOT on REALTY in aid of personalty.

Commencement, p. 655 ; Specific legacies, pp. 656, et seq. ; General legacies, pp. 674, et seq., see p. 688, form XLIII. ; Bequests of annuities, pp. 684, et seq., see p. 689, forms XIV. and xv. ; Bequest of residuary personalty and realty, p. 697, form III., adding after the bequest of the personalty the words, "subjt to and after paymt of my funeral and testamentary expenses," &c., as in p. 696, form I., and inserting after the gift of the real estate the words, "charged in aid, &c.," as in form III., if the real estate is to be charged ; Appointment of executors, p. 797.

IN WITNESS, &c.

IV.

WILL disposing of REAL and PERSONAL estate in trust PREC. IV.
for CONVERSION and payment of INCOME to WIFE
for LIFE or WIDOWHOOD, with remainder in TRUST
for CHILDREN, with VARIATIONS. ULTIMATE trust
for testator's BROTHERS and SISTERS, or NEPHEWS
and NIECES (b).

Commencement, p. 655, form I. ; [Confirmation of marriage settlement, p. 656 ;] Bequest to wife of furniture and moveables and wines and consumable stores, p. 659 ; Other specific legacies, p. 656 ; Immediate pecuniary legacy to wife,

(b) See the notes to the clauses, above.

PREC. IV. p. 675, form VI.; *General legacies*, p. 674; *Devise and bequest of realty and residuary personalty to trustees*, p. 698, form VIII.; [or *Gift of residuary realty and leaseholds to trustees*, p. 697, form VI. or VII.; *Gift of residuary personalty to trustees*, p. 697, form V., omitting at the end of each form the words, "that is to say upon trust;" AND I DECLARE that my trees shall, &c.]; *Trust for conversion, with power to postpone conversion*, p. 699, form I.; *Trusts of proceeds of conversion to pay debts, &c.*, p. 708, form VIII.; and for investment, p. 705, form XII.; *Trusts for payment of income to wife for life or widowhood*, p. 708, form I. [charged with maintenance of children, p. 711, form X.]; AND AFTER the death [or marre] of mysd wife, shall stand possessed of the sd trust premes and the income thof, [trust for children as widow shall appoint, p. 712, form I. or III.]; [Proviso where wife's interest is determinable on marriage, p. 712, note (e)]; *Trust for children at twenty-one, &c.*, p. 714, form IV. or V.; [for the form where daughters marrying without consent are absolutely excluded, see form VI.; where children dying in testator's lifetime leaving issue are to be included, see p. 717, form XII.; where the issue of children dying in testator's lifetime are to be substituted for the parents, see p. 720, form XVII., or, p. 721, form XX.; where the issue of children dying in the widow's lifetime are to be substituted for the parents, see p. 721, form XIX.; where the children take unequally, see p. 728, form XXIII. or XXIV.; where shares are given to any of the children by name, insert, if appropriate, the accruer clause, p. 738, form X.]; [If the widow has a power of appointment, Hotchpot clause, p. 723, form XXV.]; [Clause directing sums taken under marriage settlement to be taken into account, p. 724, form XXVII.]; *Advances made to children by testator in his lifetime to be brought into account*, p. 725, form XXIX.; [Maintenance and accumulation clauses, unless omitted in reliance on the statute, p. 741, forms I. and II.]; [where the children are to be maintained out of the income as a common fund, see p. 743, form III.; and where out of capital, p. 747, form X.]; *Advancement clause*, p. 745, form VII.; *Ultimate*

trust in default of children commencing as at p. 737, form VI., or if more appropriate, as in form IV. or V., for brothers and sisters of testator, [or his nephews and nieces, "being children of my own brothers and sisters,"] living at his death, or at time of failure of prior trusts, and children of those dead, p. 735, form I. or II.: Direction as to income until conversion, p. 704, form X.; Power to manage real and leasehold estates until sale, p. 751, form I. or II.; Clauses (c) giving powers of leasing, &c., by reference to the Settled Land Act, p. 755; Provision as to [mansion house or residence with reference to the Act, p. 790, and as to Mining rents, p. 790, and] notices, p. 790; Power to allot specific property in satisfaction of shares of residue, p. 701, form IV.; Power to trustees to determine questions, p. 760; Clauses supplemental to the statutory provisions as to appointment and indemnity of trustees, pp. 793, and 796; Appointment of executors and trustees, p. 797; Declaration as to devolution of trustees' powers, p. 796; [Appointment of trustees for purposes of Settled Land Act, p. 791]; sole trustee autho-

PREC. IV.

(c) In wills containing a trust for conversion there is in general no absolute necessity for the insertion of any clauses with reference to the Settled Land Act, as the powers of the Act would apply if there is a tenant for life or limited owner within the meaning of s. 63, and the trustees would by virtue of the trust for sale be the trustees for the purposes of the Act: and where the testator has not, and is not likely to acquire any real or leasehold property of any importance, or it is wished to make a short will, the clauses may be omitted altogether. But if it is desired to facilitate the granting of leases, the tenant for life should be enabled to exercise the statutory powers without any restriction by inserting the clauses, dispensing with the necessity for giving the statutory notices under s. 45, or for obtaining the consent of the trustees to a lease of a house of residence, under s. 15, if applicable. For a property containing minerals of any kind (including quarries or brickfields) the mining rent clause should be inserted if according to the intention. The authority to a sole trustee to act should, if the Act is relied on, and if so intended, be inserted, or added to the ordinary trustee clauses.

As to clauses referring to Settled Land Act.

As to giving leasing and other powers to the trustees, see p. 753, note. If any such powers are given to them by reference to the Settled Land Act, as in form V., p. 755, they should be declared to be trustees within the meaning of the Act for the purpose of such powers, see p. 791, form I. and note thereto.

PREC. IV. *rised to exercise powers of the Act, p. 791, form II. ; Appointment of guardians, p. 798.*

IN WITNESS, &c.

V.

PREC. V.

WILL disposing of PERSONAL ESTATE in trust for CONVERSION and payment of INCOME to the WIDOW for LIFE, with remainder to the CHILDREN. VARIATIONS for REAL and LEASEHOLD ESTATE. A very SHORT FORM.

Commence- ment.	THIS is the last and only will of me, A., of, &c. ; I GIVE
Bequest of furniture.	to my wife, B., all articles and effects of personal domestic or household use or ornamt and an immediate legacy of
Gift of residue.	£—— ; I GIVE the residue of my [real and personal] este to
Trust for conversion.	my sd wife and C., of, &c., hinafter called my trees ON TRUST to sell, convert, and get in the same, with power to postpone such sale and conversion indefinitely without being
Trust to pay debts	responsible for loss, AND out of the proceeds thof to pay my funeral and testamentary expenses, debts, and legacies, AND
and invest.	to invest the residue in any investmts authorised by law in the case of trust funds, with power to vary such investmts
Pay income to wife for life.	at discretion, AND to pay the income of the sd trust este, as well before as after the sale, conversion, and investmt thof, to my wife during her life, AND after her death to stand
Trust for children.	possessed thof in trust for my children or remoter issue in such shares as my sd wife shall by deed or will appoint, AND
As wife shall appoint.	in default of and subjt to any such appointmt in trust for all or any my children or child who being male attain the age of
In default of appoint- ment for children.	twenty-one years, or being female attain that age or marry, if more than one equally ; <i>Hotchpot clause</i> , p. 728 ; <i>Advance-ment clause</i> , p. 745 ; [If the testator is entitled to real or leasehold property add if thought proper, <i>leasing power</i> , p. 758 ; <i>Provision as to residence, with reference to Settled</i>

Land Act, p. 790, and clause as to notices under *Act*, p. 790, PREC. V.
and as to a sole trustee, p. 791]; I APPOINT my sd wife Appoint-
 and the sd C. my exs, AND I appoint my wife and after her ment of
 death such pson or psons as she shall by will appoint to be executors
 guardian and guardians of my infant children. and guar-
dians.

IN WITNESS, &c.

VI.

WILL, containing bequest of STOCK legacy to a SISTER PREC. VI.
 and her ISSUE, and disposing of REAL and PERSONAL
 Property in trust for CONVERSION. TRUSTS for
 WIDOW for LIFE, remainder for Testator's CHIL-
 DREN. VARIATIONS for a WILL of a SMALL TRADER.
 A very SHORT FORM.

Commencement, p. 655, form II. ; *Bequest of furniture, &c.*,
to wife, p. 659, form XVIII. ; *Bequest of stock legacy to* Bequest
trustees, p. 675, form v., UPON TRUST to pay the dividends of stock
 thof to my sister — during her life, without power of legacy to a
 anticipation during any coverture, and from and after her sister and
 decease as to the capital of the sd sum of stock IN TRUST her issue.
 for her children or such of them as shall be living at my
 death, if more than one, in equal shares (d) ; BUT IF she
 shall not have any child then living, then the same sum of
 stock shall sink into, and become pt of my residuary
 personal este ; *General legacies*, p. 674 ; *General devise and*
bequest in trust for conversion, payment of debts, &c., and in-
vestment as in last precedent ; AND UPON TRUST to pay the in- Income.
 come of my sd residuary este, and the investmts thof to
 my wife during her life, and after her death to hold the same

(d) This trust is sufficient where the family is grown up ; for other forms,
 see pp. 714 *et seq.*

PREC. VI. trust premes [*Power of appointment to wife in favour of testator's children*, p. 713, form III.]; [*Trusts for children*, p. 714, form IV.][*for variations in the trusts for the children, see the references in Precedent IV.;*] [*Hotchpot clause*, p. 723, form XXV.]; *Advancement clause*, p. 745, form VII.; [*For trader, add short form of power to carry on business*, p. 671]; I DECLARE that the net annual produce arising from the unconverted pt of my este, whether real or personal, and whether of a permanent or a leasehd or wasting character [including the net profits derived from the carrying on of the sd business], shall be applied in the same manner as if the same were income arising from the proceeds of the conversion of my este; *Power to manage real and leasehold property until sale*, p. 753, form II.; [*Leasing power*, p. 752; *Add any clauses required with reference to the Settled Land Act, see Precedent IV., and note thereto*]; *Clauses supplemental to the statutory provisions as to appointment and indemnity of trustees if required*, pp. 793 and 796; *Appointment of executors*, p. 797, and *guardians*, p. 798.

Declaration
as to in-
come till
conversion.

IN WITNESS, &c.

VII.

PREC. VII. WILL, giving an ANNUITY to the Testator's WIFE, and containing specific and residuary BEQUESTS to his two CHILDREN, ONE of whom is a MINOR, with a GIFT OVER on his DEATH under twenty-one to the other. DOWER Clause. Power to CONTINUE a LOAN. A Short Form.

Commencement, p. 655; *Gift to wife A. of furniture, &c.*, p. 659; and *immediate legacy*, p. 675; *Specific legacies to B. and C., the children*, p. 656; *Gift of annuity to A.*, p. 685, form V.; AND I AUTHORISE my exs to pchase an annuity

from Government or some public company in the name of my wife, to satisfy the annuity hinbefore given to her; [Dower clause, p. 741;] Power to executor to continue loan, p. 785; Gift of residue to B. and C. equally, p. 697, form III. : BUT IF the sd C. shall survive me, and afterwards die under the age of twenty-one years, and without issue, then I DEVISE AND BEQUEATH the moiety of my real and residuary personal este hinbefore given to him to the sd B., his hrs, exs, ads, and assigns absolutely; AND IF either of them the sd B. and C. shall die in my lifetime without leaving issue surviving me, I devise and bequeath all the real and personal este hinbefore given to him, to the other of them, if he shall survive me, or shall die in my lifetime leaving issue surviving me, his hrs, exs, ads, and assigns absolutely; AND I DECLARE that if I shall die before the sd C. shall attain the age of twenty-one years, the sd B., or other the tree or trees of this my will, shall invest the personal este hinbefore bequeathed to the sd C. in or upon, &c., investments, p. 435, form IV., V., or VI., with power to vary such investmts at discretion; AND I DECLARE that during the minority of the sd C. the sd tree or trees shall take and retain possion, or receive the rents and profits of the real and leasehd hereds hby devised to the sd C., and shall manage the same with the same powers in that behalf as if such tree or trees were absolutely entled thto: AND SHALL, after paying all outgoings and expenses, apply at discretion the whole or any pt of the sd net rents and profits, and also the income of the sd investmts of the personal este hinbefore bequeathed to him (subjt to the paymt of the sd annuity, or a proportionate pt thof), for the maintenance and education of the sd C., with power to pay the same to his guardian or guardians for that ppose, without seeing to the application thof; AND THE SURPLUS of the sd rents, profits, and income shall be invested in mner afsd, and shall accrue and be added to the personal este hinbefore bequeathed to the sd C., but so that such surplus, or the investmts thof, may be

PRES. VII.

Power to purchase annuity(a).

Gift over on death of son under twenty-one,

and on death of either son in testator's lifetime.

Investment of share of minor.

Minority clause.

Maintenance.

Accumulation.

(a) See p. 688, note.

PREC. VII. applied for the benefit of the sd C. in any subsequent year (e); I AUTHORIZE the sd tree or trees to raise by mtge or sale any sum or sums, not exceeding in the whole the sum of £——, out of the real and personal ppty hby given to the sd C., and to pay or apply the same for his advancement or benefit during minority, as the sd tree or trees shall think fit: AND I DECLARE that it shall be lawful for the sd tree or trees during the minority of the sd C. to exercise over his share of all or any of my real and leasehold hereds all such powers as are by the Settled Land Act, 1882, conferred upon tenants for life; *Appointment of B. as trustee for the purposes of the Settled Land Act, p. 791; Add any of the other clauses with reference to the Act which may be required as in Precedent IV.; Appointment of A. guardian of C., p. 798.*

Advance-
ment.

Clause
giving
powers of
Settled
Land Act.

IN WITNESS, &c.

VIII.

PREC. VIII.

WILL disposing of REAL and PERSONAL property WITHOUT trust for CONVERSION, INCOME to WIFE for LIFE or WIDOWHOOD. VARIOUS TRUSTS for CHILDREN or ISSUE.

Commencement, p. 655; [Confirmation of marriage settlement, p. 656]; Bequest to wife of furniture and moveables

(e) The minority clause in the Conv. Act, 1881, s. 42, would apply to this case (see p. 748, note). and might be relied on as to the real or leasehold property, form xvi., p. 749, being in that case inserted, *mutatis mutandis*; but the maintenance clause in s. 43 would not apply as the interest of the infant in this case is a *vested* one subject to a gift over (see p. 449, note), so that the insertion of an express clause is necessary as to the personality, and as s. 42 of the Act would require some modification as to the realty and leaseholds, it seems better to make express provision as to both.

and wines and consumable stores, p. 659 ; Other specific legacies, p. 656 ; Immediate pecuniary legacy to wife, p. 675, form VI. ; General legacies, p. 674 ; Gift of realty and residuary personalty to trustees, p. 698, form VIII., with the addition in note (e), UPON TRUST that the sd trees, or the survivors PREC. VIII.
or survivor of them, or the exs or ads of such survivor, or other the trees or tree for the time being of this my will (hinafter called my trees) shall pay, &c., Income to wife for life or widowhood, p. 708, form I., inserting in this and the subsequent clauses the variations given in the notes for a mixed fund of real and personal estate [charged with maintenance of children, p. 711, form x.]; AND AFTER the death [or marre] of my sd wife shall stand possessed of the sd trust premes, and of the net rents, profits, and income thof, [Trust for children as widow shall appoint, p. 712, form I. or III.]; [Proviso where wife's life interest is restricted to widowhood, p. 712, note (e) ;] Trust for children at twenty-one, &c., p. 714, form IV. or v., [for the form where daughters marrying without consent are absolutely excluded, see form VI. ; where children dying in testator's lifetime are to be included, see p. 720, form XII. ; where the issue of children dying in testator's lifetime are to be substituted for the parents, see p. 720, form XVII., or p. 721, form XX. ; where the issue of children dying in the widow's lifetime are to be substituted for the parents, see p. 721, form XIX. ; where the children take unequally, see p. 723, form XXIII. or XXIV. ; where shares are given to any of the children by name, insert, if appropriate, the accruer clause, p. 738, form x.]; [Hotchpot, p. 723, form XXV.]; [Clause directing sums taken under marriage settlements or advances made by testator in his lifetime to be brought into account, p. 724, forms XXVII. and XXIX.]; PROVID ALWAYS and I hby declare that for the ppose of giving effect to the several provons hinbefore contd, continue addition to hotchpot and advancement clauses, p. 725, form XXVIII. ; [Special maintenance and accumulation clause, p. 748, form XIV.] (f) ; Special advancement clause, p. 750, form XVII. ;

(f) The real and personal estate being in this precedent vested in the trustees in trust for the infants, ss. 42 and 43 of the Conv. Act, 1881, would

PREC. VIII. *Ultimate trust in default of children, commencing as at p. 736, form IV., v., or VI.; Special declaration as to income of property of a wasting nature, p. 704, form XI.; Power to manage real and leasehold estates, p. 751, form I. or II., with the variations; Clause giving to trustees powers of leasing and sale, &c., by reference to the Settled Land Act, p. 755; Appointment of trustees under Act, p. 791; Add any of the other clauses required with reference to the Act, as in Prec. IV. (g); Power to allot specific property in satisfaction of shares of residue, p. 701, form IV.; Power to trustees to determine questions, p. 760; Clauses supplemental to statutory powers of appointing and indemnity to trustees, pp. 793, 796; Declaration as to devolution of trustees' powers, p. 796; Appointment of executors, p. 797, and guardians, p. 798.*

IN WITNESS, &c.

IX.

PREC. IX.

WILL of a WIDOW in favour of an ONLY SON who is a MINOR, with a GIFT OVER in case of his DEATH UNDER AGE. SHORT FORM.

Trusts.
Maintenance.

Commencement, p. 655; Bequest of jewellery and wearing apparel, p. 658; General legacies, p. 674; General devise and bequest to trustees, p. 698: UPON TRUST, during the minority of my son A., To APPLY the whole or any pt, at the discretion of my trustees, of the annual produce and income of the sd trust premises for or towards the maintenance,

both apply (see p. 449, note, p. 742, note), and the objection as to the clashing of those sections adverted to in p. 450, note, is a reason for excluding them and inserting an express provision for maintenance and accumulation.

(g) The remarks in the note to that Prec. as to these clauses are applicable; except that as there is no trust for sale, in this case the clause appointing trustees for the purposes of the Act is required unless an express power of sale is given to them.

education, or benefit of my sd son, or to pay the same for PREC. IX.
 that ppose to his guardian or guardians, or the pson or psons
 hinafter appointed his guardian or guardians (a), without
 seeing to the application thof, AND TO ACCUMULATE the sur- Accumu-
 plus (if any) of the same annual produce and income at lation.
 compound interest, by investing the same and the resulting
 income thof during my sd son's minority in any investmts
 in which trust funds may be authorised by law to be invested,
 in augmentation, and so as to follow the destination of the
 capital of my sd residuary personal este, but with power to
 apply the accumulations of any preceding year or years for
 the maintenance, education, or benefit of my sd son in any
 succeeding year or years (b); AND WITH POWER also to my Advance-
 trees in their discretion to apply any pt of the capital of the ment.
 sd trust premes for the advancemt of my sd son during his
 minority in such mnner as they may think fit; AND I DECLARE For son at
 that in case and when my sd son shall attain the age of twenty-
 twenty-one years, my trees shall hold the sd trust premes, one.
 or so much thof as shall not have been applied or disposed
 of under the preceding trusts, in trust for my sd son, his
 hrs, exs, ads, and assigns absolutely; BUT IF MY sd son On his
 shall die, whether in my lifetime or after my decease, under death
 the age of twenty-one years, or shall die in my lifetime after under age.
 attaining that age, but without leaving issue surviving me (c),
 then UPON TRUST from and after the death of the survor of Sister for
 life.

(a) These words are inserted, as the appointment of guardians, being by the mother, is not legally valid.

(b) A simple gift to the trustees "in trust for my son A. in case and when he shall attain the age of twenty-one years," so as to be *contingent* on that event, would imply the maintenance and accumulation clauses in the Conv. As to
 Act, 1881, s. 43, and would suffice, the power of advancement being added; omission
 and the gift over would in that case be of "the sd trust premes, or of main-
 so much thof as shall not have been applied or disposed of tenance
 under the trusts or powers of this my will or by law vested in clause.
 my trees." But it should be noted that if a *vested* interest were given to
 the infant, subject to the gift over, the statutory power would not apply,
 see p. 449, note.

(c) If the son were to leave issue the gift would take effect under the 33rd section of the Wills Act.

PREC. IX. myself and my sd son, to pay the annual produce and income of the sd trust premes to my sister — during her life, without power of anticipation during any coverture, and after her death UPON TRUST to pay thereout the sum of £—— to each of my sisters — and ——, and to hold the ultimate residue of the sd trust premes IN TRUST for —— ;
 After her death. *Powers of management*, p. 751; *Clauses giving powers of*
 Legacies to sisters. *leasing and sale, &c., by reference to Settled Land Act, 1882*,
 Ultimate trusts. *p. 755, and appointing trustees for purpose of Act, p. 791 : add any other clauses required with reference to Act, as in Prec. IV. ; Appointment of executors, p. 797, and guardians, p. 798 (d).*

IN WITNESS, &c.

X.

PREC. X. WILL bequeathing LEASEHOLDS in trust for a SISTER of the testator and her ISSUE, and giving CHARITABLE and OTHER LEGACIES, including a PECUNIARY LEGACY in trust for another SISTER, and her ISSUE, and disposing of residuary REAL and PERSONAL estate in trust for CONVERSION, the INCOME to be paid to the TESTATOR'S BROTHER for LIFE, with TRUSTS in remainder for the BROTHER'S CHILDREN.

Bequest of leaseholds in trust for a sister and her issue. *Commencement*, p. 655 ; *Specific legacies*, p. 656 ; *Bequest of leasehold house and land to trustees upon trust to pay outgoings*, p. 664, *form II.*, AND UPON FURTHER TRUST, during

(d) Although a widow cannot legally appoint a guardian to her child, *Ex parte Edwards*, 3 Atk. 519, save by delegation from their father (see *Re Parnell*, L. R. 2 P. & D. 379), still where the father has expressed no wish, the Court will probably confirm her appointment, *Re Kaye*, L. R. 1 Ch. Ap. 387, but see remarks of Jessel, M. R., in *Re Alison*, 8 Ch. D. 5.

the life of my sister B., to pay the surplus or net rents and profits of the same premes to my sd sister, or permit or empower her to receive the same without power of anticipation during any coverture, AND FROM AND AFTER her decease my trees shall stand possessed of the sd leasehd premes, *for children or child of sister*, "their, his, or her exs, ads, and assigns," *at twenty-one, &c.*, p. 714, *form IV.*; AND IN CASE my sd sister shall have no child who shall attain a vested interest under the trusts hinbefore contd, then in trust for such pson or psons for such pposes and in such mner in all respects as my sd sister shall by deed or will appoint, and in default of and subjt to any such appointmt, the same premes shall sink into and become pt of my residuary este [*or, if it is desired absolutely to exclude a husband, form VII., p. 737, may be used*]; PROVID ALWAYS, and I direct that if at the decease of my sd sister any child of hers shall be under the age of twenty-one years, and in the case of a female unmarried, my trees shall take and retain possion, &c., *continue as at p. 749, form xv. or xvi.*; [*Advancement clause, p. 750, form xvi. (e)*]; *Other specific devises, p. 690; Charitable legacies, p. 679; General legacies, p. 674; Bequest of money legacy to trustees, p. 674, form iv.*; UPON TRUST that my trees shall invest, &c., *Trust to invest and vary investments, p. 705, form XII., to pay income to testator's sister C. for life, without anticipation, p. 708, form II.*; [*If life interest in remainder is given to C.'s husband D., insert form III., for life interest determinable on bankruptcy, &c., see form iv. or v.*]; AND after the death of the sd C. [*or, of the survivor of them the sd C. and D.*], my trees shall stand possessed of the sd sum of £——, and the investmts representing the same, IN TRUST, &c., *for C.'s children [as C., or C. and D., or survivor may appoint, p. 713, form II. or III., in default of appointment for children] equally at twenty-one, &c., form IV.* [*Hotchpot clause, p. 723, form xxv.*]; [*Maintenance and accu-*

PREC. X

And in default of issue for her appointees, or to fall into residue.

Maintenance clause.

Bequest of legacy in trust for another sister, and her issue.

(e) The powers of leasing and sale, &c., are omitted in reliance on the Settled Land Act. For a form giving such powers by reference to the Act, see p. 750.

PREC. X. *mulation clauses, p. 741, forms I. and II., unless omitted in reliance on the statute*]; *Advancement clause, p. 745*; *Ultimate trust of "the sd legacy of £——, and the investmts representing the same," p. 736, form IV., for C.'s appointees, and in default of appointment to fall into residue, as above [or, if it is desired absolutely to exclude a husband, form VII., p. 737, may be used]*; *Annuities to servants, &c., p. 684*; *Gift of residuary realty and personalty to trustees, p. 698; form VIII.*; *Upon trust for conversion, p. 699, form I.*; *Trusts of proceeds for payment of debts, &c., p. 703, form VIII.*; *and for investment, p. 705, form XII.*; *Trusts for payment of income, "subjt to the annuities hinbefore bequeathed," to A. the brother for life, p. 708, form I.*: **AND AFTER** *the death of the sd A., shall stand possessed of the sd trust premes, and the income thof (subjt as afsd), Trust for A.'s children or issue, as he shall appoint, p. 713, form II. or III.*; *Trust in default of appointment for A.'s children at twenty-one, &c., p. 714, form IV., [where the trust includes children of A., dying in testator's lifetime, leaving issue, see p. 718, form XIII.; where the trust is for the children of A. who survive him and the issue of those dying in his lifetime, see p. 721, form XIX., and p. 721, form XXI.; where the eldest son taking the estate is excluded, see p. 722, form XXII.; where the children take unequally, see p. 723, form XXIII. or XXIV.]*; *Hotchpot, p. 723, form XXV.*; [*Maintenance and accumulation clauses, p. 741*]; *Advancement clause, p. 745*; *Ultimate trust in default of A.'s children, commencing as in p. 736, form IV., V., or VI.*; *Direction as to income until conversion, p. 704, form X.*; *The rest of this Precedent will be the same as Precedent IV., including such of the clauses relating to the Settled Land Act as may be required with reference to the specifically devised leaseholds or the residuary estate, but with the omission of the appointment of guardians.*

IN WITNESS, &c.

XI.

WILL disposing of REAL and PERSONAL property, PREC. XI.
 including COPYHOLDS, in trust for CONVERSION.
 The WIFE takes a LIFE INTEREST in the WHOLE,
 DETERMINABLE as to one MOIETY on her MARRY-
 ING again, with REMAINDER to CHILDREN at
 twenty-one, &c. SETTLEMENT of DAUGHTER'S
 SHARES. The TRUSTS of the SHARES being
 declared TOGETHER.

Commencement, p. 655 ; *Specific legacies*, p. 656 ; *General legacies*, p. 674 ; *Devise of copyholds to such uses as B., C., and D. trustees, shall appoint, and subject thereto all realty to trustees*, p. 698, *form VII.* ; *Bequest of personalty to trustees*, p. 697, *form V.* ; AND I DECLARE that my trees shall hold the sd real and Trusts. personal este and premes hinbefore devised and bequeathed to them upon trust, &c., *Trust for conversion*, p. 699, *form I.* ; *Trusts of proceeds of conversion to pay debts, &c.*, p. 708, *form VIII.* ; *Trust for investment*, p. 705, *form XII.* ; AND SHALL Income. pay the income of one moiety of the sd trust premes representing my sd residuary este to my wife during her widowhood, and the income of the other moiety of the sd trust premes to my wife during her life, and so that during any future coverture she shall not have power to anticipate the income of such moiety : AND SHALL stand possessed of Capital. such last mentd moiety of the sd trust premes from and after the death of my sd wife, and of the sd first mentd moiety thof from and after her death or marre which shall first happen, *Trust for children at twenty-one, &c.*, p. 714, *form IV.* : PROVD ALWAYS, AND I DECLARE that my trees shall Settle-
ment of
daughter's
shares. retain the share in the sd trust premes hinbefore given to any daughter of mine (f), &c., *First life interest to daughter without anticipation*, p. 727, *form III.* ; *Power of appointment*

(f) For the mode of declaring the trusts where the shares are settled differently, see the next Precedent.

PREC. XI. *among daughter's children or issue, p. 728, form VII. ; Trust for daughter's children in default of appointment, p. 728, form VIII. ; Hotchpot clause, p. 728, form IX. ; Power to daughter to appoint a life interest to her husband, p. 729, form XIII. ; Ultimate trust of daughter's share for her testamentary appointees, p. 728, form X. ; In default of appointment for her next of kin, p. 729, form XI. [Or to accrue to other shares, p. 729, form XII.]; Proviso that share of daughter dying in testator's lifetime shall be held upon the same trusts as if she had survived him, p. 732, form XVII. ; Proviso that share of son dying in testator's lifetime shall be in trust for his children, at twenty-one, &c., and in default shall accrue to other shares, p. 732, form XVIII. [Maintenance and accumulation clauses, p. 741, unless omitted in reliance on the statute]; Advancement clause, p. 745, form VII. ; Direction as to income until conversion, p. 704, form XI. ; Power to manage real and leasehold estate until sale, p. 751, form I. or II. ; Clause giving powers of leasing, &c., by reference to the Settled Land Act, p. 755, and any other clauses relating to the Act which may be required, as in Precedent IV. ; Power to allot specific property in satisfaction of shares of residue, p. 701, form IV. ; Proviso as to consent to investments, p. 706 ; Power to trustees to determine questions, p. 760 ; Power to appoint special trustees of daughters' shares, p. 798 ; Clauses as to appointment and indemnity of trustees, pp. 793 and 796, forms VI. and XIII. ; Declaration as to devolution of trustees' powers, p. 796 ; Appointment of executors, p. 797, [and guardians, p. 798].*

IN WITNESS, &c.

XII.

PREC. XII.

WILL of REAL and PERSONAL property in trust for CONVERSION. The BENEFICIAL TRUSTS being for testator's BROTHERS and SISTERS NOMINATIM, and

the SHARES being SETTLED on the donees and their issue, &c. THE TRUSTS of two shares are IDENTICAL, and of all the other shares are DIFFERENT, the TRUSTS being partly declared by REFERENCE. ACCRUE clause.

PRINC. XII.

Commencement, p. 655 ; Specific legacies, p. 656 ; General legacies, p. 674 ; Gift of residuary realty and personalty, p. 698, form VIII. ; on the usual trusts for conversion, p. 699 ; Trust of proceeds for payment of debts, &c., p. 708, form VIII. ; AND SHALL stand possessed of the residue of the sd monies in trust for my brothers and sisters, naming them, in equal shares ; PROVID ALWAYS and I declare that my trees shall retain the share in the sd residuary monies hby given to the sd K., and shall with the consent of the sd K., if living and of full age, or otherwise at their discretion invest such share in the names or under the legal control of my trees in or upon, &c., investments and power to vary, p. 485, form IV., V., or VI. ; AND SHALL pay the income of the sd share and the investmts representing the same to the sd K. during his life ; AND AFTER the death of the sd K. shall stand possessed of the sd share and of the investmts thof, Trust for children or issue of K., as he shall appoint, p. 718, form II. or III., in default for his children at twenty-one, &c., p. 714 ; form IV. ; Hotchpot, p. 728, form XXV. : AND I DECLARE that my trees shall stand possessed of the share in the sd residuary monies hinbefore given to the sd L. and the investmts and income thof upon the like trusts and with and subj to the like powers and provons in favour of my sd brother L. and his children and more remote issue, and otherwise, as are hinbefore decl'd and cont'd concerning the share hinbefore given to the sd K., and the investmts and income thof, in favour of the sd K. and his children and more remote issue, in the same mner in all respects as if such trusts, powers, and provons were herein repeated with the substitution of the name of the sd L. for the name of the sd K. ; Similar trust of the share of another brother M., SAVE AND EXCEPT that in case the sd M. shall at any time alienate or charge,

Trusts of share of one brother.

Of another brother by reference.

Of another brother. With variations.

PRÆG. XII. &c., *continue proviso determining life interest on bankruptcy, &c., and provision for application of income, p. 710, form IX.* ; AND SAVE AND EXCEPT further, and I declare that after the determination or failure of the life interest of the sd M., and subjt to the discretionary trust or power lastly hereinbefore contd, my trustees shall pay the income of his share and the investm'ts thof to X. his present wife, if surviving during her life, without power of anticipation during coverture; *Trusts of share of a sister.* *Declaration that trustees shall retain the share of N. a sister upon trust for investment as above, saying, "in or upon any of the stocks, funds, shares, and secs hereinbefore authorised as investm'ts in the case of the share of the sd K., and may with such consent or at such discretion as aforesaid vary or transpose such investm'ts for others of the like nature :"* AND SHALL during the life of the sd N., &c., *life interest without anticipation, p. 727, form III. ; Second life interest to present husband, p. 727, form VI. ; Power of appointment among issue, p. 728, form VII. ; Trust in default for children at twenty-one, &c., p. 728, form VIII. ; Hotchpot, p. 728, form IX. ;* *Of another sister by reference.* *Declaration that trustees shall stand possessed of another share upon trusts in favour of O. another sister and her husband and issue similar to those in favour of N., "her husband and issue," see above, SAVE AND EXCEPT that from* *With variations.* *and after the death of the sd O. my trustees shall hold the sd share and the income thof in trust for such person or persons and for such purposes as the sd O. shall, while discovered by deed revocable or irrevocable, or whether covert or discovered by will or codicil appoint, and that the trusts in favour of the husband and issue of the sd O. shall take effect only in default of and subjt to any such appointment, General [maintenance and accumulation clauses, p. 743, and] advancement clause, p. 746, form VIII., applying to all the shares ; PROVIDED ALWAYS, and I declare that if any of my sd brothers and sisters shall die in my lifetime leaving issue living at my death, their, his, or her share shall be held upon and for the same trusts and purposes as if he or she had died immediately after my death ; Accruer clause, p. 738,* *Provision in case of death of a brother or sister in testator's lifetime.* *Accruer clause.*

form IX., mutatis mutandis, saying, "the share of any brother or sister of mine," "by way of addition to the share or shares of the other or others of my sd brothers and sisters;" Declaration as to income until conversion, p. 704, form x.; The rest of the clauses may be as in Precedent IV., omitting the appointment of guardians and adding a power to appoint special trustees, p. 798, form v., "of the share or shares of any brother or sister of mine in the sd trust premes."

IN WITNESS, &c.

XIII.

WILL of REAL and PERSONAL property. BEQUEST of

BUSINESS, or SHARE of BUSINESS, to ELDEST SON.

USUAL trusts for CONVERSION. TRUSTS for payment of an ANNUITY to WIDOW and ANNUAL SUMS for benefit of an IMPROVIDENT SON. Subject thereto TRUSTS of PROCEEDS of CONVERSION for CHILDREN OTHER than the ELDEST Son and the IMPROVIDENT Son. POWER to LEND trust FUNDS to ELDEST SON to be USED in the BUSINESS.

Commencement, p. 655; Specific legacies, p. 656; General legacies, p. 674; Bequest to eldest son of business or share in partnership, p. 666; Gift of realty and residuary personalty to trustees, p. 698, form VIII.; on trust for conversion, p. 699, form I.; to pay debts, &c., p. 703; to invest residue, p. 705, form XII.; AND SHALL out of the income of the sd trust premes pay an annuity of £—— to my wife during her life, to commence from my death and be payable, &c., p. 684, form I.; AND SHALL, subjt to the paymt of such annuity, stand possessed of the sd trust premes and the income thereof in trust for my children or child other than the sd K., the

Annuit
to wife.

Trusts of
capital.

PRBG. XIII. *eldest son, and my son L., the improvident son, at twenty-one, &c., p. 714, form IV.: AND IF I shall have no child other than as aforesaid who being a son attains the age of twenty-one years or being a daughter attains that age or marries, then in trust for the said K., his exors, admors, and assigns, absolutely; [Maintenance and accumulation, p. 741, and] advancement, p. 745; Power to lend trust funds to eldest son for purposes of business, p. 707; PROVID ALSO, and I further authorise my trustees, if in their uncontrolled discretion they shall think fit, to raise out of the income, &c., continue power to raise and pay annual sums for the benefit of L., the improvident son, p. 686, form IX.; Power to appropriate fund to answer annuity, "and the sums of money for the time being raiseable under the power lastly hereinbefore contained," and saying afterwards, "such annuity and annual sums," p. 687, form XI.; Declaration as to income until conversion, p. 704, form X.; Power to manage real and leasehold estate, p. 751, form I. or II.; Clause giving powers of leasing, &c., by reference to Settled Land Act, p. 755; Add any other clauses with reference to the Act which may be required, as in Prec. IV.; Power to trustees to determine questions, p. 760; Clauses as to appointment and indemnity of trustees, p. 793, form VI., p. 796, form XIII.; Declaration as to devolution of trustees' powers, p. 796; Appointment of executors, p. 797, and guardians, p. 798.*

Trust for
improvident
son.

IN WITNESS, &c.

XIV.

PRBG. XIV.

WILL of a PARTNER in trade disposing of REAL and PERSONAL property on USUAL TRUSTS for CONVERSION, &c., giving POWERS to TRUSTEES to join in CARRYING ON BUSINESS, and to make ARRANGEMENTS for ADMISSION of testator's SONS. THE

PROPERTY is held on the USUAL TRUSTS for the PREC. XIV.
 WIDOW and CHILDREN, with SETTLEMENT of the
 SHARE of an IMPROVIDENT CHILD.

Commencement, p. 655; *Specific legacies*, p. 656; *General legacies*, p. 674; *Gift of realty and residuary personalty to trustees*, p. 698, form VIII.; *On trust for conversion*, p. 699, form I.; *To pay debts*, p. 703; *and to invest*, p. 705; *Life interest to widow*, p. 708, form I.; *Usual trust for testator's children at twenty-one*, p. 714, form IV.; [*Maintenance and accumulation*, p. 741, and] *advancement*, p. 745; PROVID Trusts of share of improvident son. ALWAYS, and I declare, that my trustees shall retain the share in the sd trust premises hereinbefore given to my son K., the improvident son, and shall, in their absolute discretion, *Trust for improvident son*, p. 738, saying, "the sd share," and omitting the ultimate trust, for which may be substituted the following; PROVID ALWAYS, and I declare that in the event of the failure or determination of the trusts and provisions hereinbefore declared and continued concerning the share of the sd K. in the sd trust premises, such share and the income thereof or so much thereof respectively as shall not have been applied or disposed of under the trusts and provisions aforesaid, shall accrue and be added to the share or shares of my other children or child in the sd trust premises, and if more than one, in equal shares and proportions; *Power to trustees to continue business*, p. 669, or p. 671; AND ALSO, to make arrangements for admission of sons into business, p. 672, form VIII.; AND ALSO, to reserve right of introducing younger sons at twenty-one, p. 673, form X.; *Declaration as to income until conversion*, p. 704, form X., adding after the words, "hereinbefore directed to be sold, called in, or converted," the words, "including the net profits arising from the sd business;" The rest of the clauses may be as in Precedent IV.

IN WITNESS, &c.

XV.

PREC. XV.

WILL of a TRADER giving POWER to TRUSTEES to CARRY ON BUSINESS, with OPTION to SONS in Succession to PURCHASE it. GIFT of RESIDUE on TRUSTS for CONVERSION, and USUAL TRUSTS for WIDOW and CHILDREN. VARIATIONS where Some of the SONS are MINORS.

Commencement, p. 655 ; *Bequests of furniture, &c.*, p. 659 ; *Immediate legacy to wife*, p. 675, *form VI.* ; *General legacies*, p. 674 ; *Continue as in Precedent IV.*, adding, before the declaration as to income until conversion ; *PROVD ALWAYS*, and I declare that my sons shall have the option in succession according to seniority, [*if any of the sons are minors, insert here, "on attaining the age of twenty-one years,"*] *continue form IX.*, p. 678 ; *If any of the sons are minors, add.* AND I AUTHORISE my exs to carry on my sd business until any son of mine shall have elected to succeed to it, or during such shorter period as they shall think fit, and for that ppose to retain or employ the capital which shall at my death, &c., *Continue short form of power to carry on business*, p. 671, *form V.*, omitting the words in brackets.

IN WITNESS, &c.

XVI.

PREC. XVI.

WILL of a TRADER giving BUSINESS to ELDEST SON CHARGED with Benefits for TESTATOR'S WIFE and CHILDREN, WITHOUT TRUSTEES. DIRECTION that the SON shall SECURE such BENEFITS by his BOND or COVENANT. GIFT of RESIDUE to WIFE absolutely.

Bequest of *Commencement*, p. 655. *Bequest of business to the eldest*

son, A., p. 666, and appointment of him as special executor, p. 798, *form* VI.; *PROVD ALWAYS*, and I declare that the bequest of the sd business and premes hinbefore made to my sd son A. is so made on this express condon that my sd son, his exs, or ads, shall pay to my wife during her life an annuity of £——, &c., p. 684, *form* I., AND THAT in case I shall have any child or children other than the sd A., who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry, the sd A. shall pay the sum of £—— to each such child by equal yearly instalmts of £—— each, whof the first is to be paid to each such son on his attaining the age of twenty-one years, and to each such daughter on her attaining the age of twenty-one years or marrying, which shall first happen, and a subsequent instalmt is to be paid at intervals of a year until the sd principal sum of £—— shall be fully paid and satisfied; AND SHALL ALSO pay interest at the rate of —— per cent. per annum on so much of such principal sum as shall for the time being remain unpaid, to commence from the day on which the first instalmt of principal is to be paid, togr with the instalmts of the principal; AND SHALL ALSO during the minority of each son of mine, and the minority and spinsterhood of each daughter of mine, pay such sum or sums of money not exceeding for each child in any one year interest at the rate afsd on his or her expectant portion as the guardians or guardian of such child shall require in writing, such sum or sums to be paid to such guardians or guardian and to be applied for the maintenance, education, or benefit of such child as they, he, or she shall think fit; AND SHALL ALSO pay to such guardians or guardian such further sum or sums of money not exceeding in the whole a moiety of the expectant portion of such child as they, he, or she shall require in writing, to be applied by them, him, or her, for the advancemt or benefit of such child, but so that such last mentd sum or sums shall be taken in pt satisfon of the expectant portion of such child, if the same shall become payable, and as a paymt by anticipation *pro tanto*

PRÆG. XVI.

business to son charged with payment of annuity to testator's wife, and of capital sums to his younger children at twenty-one, &c., by instalments.

With interest.

Maintenance.

and advancement

PREC. XVI. of the first instalmt or instalmts thof; PROVID ALSO, and I declare that my sd son A., his exs or ads, shall within six calendar months after my death, at the expense of my este. enter into a proper bond or covenant with my exs, and to their satisfson, for securing the paymt of the annuity and principal sums and interest and other monies hby directed to be paid by him or them unto or for the benefit of my wife, and my other children; *General legacies*, p. 674; *Gift of residue to wife absolutely*, p. 697, form III.; *Appointment of executors*, p. 797; and *guardians*, p. 798.

to be secured by bond or covenant.

IN WITNESS, &c.

XVII.

PREC. XVII. WILL of REAL and PERSONAL property WITHOUT any trust for CONVERSION and DISPENSING as far as may be with the intervention of TRUSTEES, PROVIDING for WIFE NOT LEGALLY MARRIED to the testator and his ILLEGITIMATE CHILDREN by her. GIFT of ANNUITY to wife to be REDUCED on her MARRYING again. GIFTS of real and personal estate to CHILDREN NOMINATIM, to VEST IMMEDIATELY, with SUBSTITUTION of ISSUE for children dying before testator, and GIFT OVER and ACCRUER as to CHILDREN DYING under twenty-one WITHOUT ISSUE.

Commencement, p. 655; *Specific legacy of furniture, &c.*, p. 659; *Immediate pecuniary legacy to "my wife A." (a)*,

Description of wife not legally married. (a) There is no objection to so describing her (see *Lepine v. Bean*, L. R. 10 Eq. 160). In the absence of fraud on the part of the wife in concealing from the husband the circumstances which render the marriage invalid, a gift to her as wife will be good, *Pratt v. Matthew*, 22 Beav. 328; *McLuish v. Milton*, 3 Ch. D. 27.

p. 675, form VI. : I BEQUEATH to my said wife an annuity of £—— during her widowhood, and in the event of her marrying again then a reduced annuity of £—— during the remr of her life, and so that she shall not have power to anticipate the same, such respive annuities to be paid by equal half-yearly paymts, and to be apportionable according to law at the commencement and termination thereof resply, and the first paymt to be made at the expiration of six calendar months from my death ; *Specific and pecuniary legacies and devises to children*, pp. 656, 674, 690, describing each child (when first mentioned) by name, so as to identify it; *Gift of residue to*, “my children hitherto named and any children or reputed children I may hereafter have by my sd wife A.” (c), as tenants in common, p. 697, form

PREC. XVII.

Gift of annuity to wife reducible on second marriage (b).

Residue to children.

(b) See another form, p. 685.

(c) Although “children,” *prima facie*, means lawful children, a bequest to “children,” without a more specific description, has, in some cases (as in *Holt v. Sindrey*, L. R. 7 Eq. 170 ; *Savage v. Robertson*, id. 176 ; *Lepine v. Bean*, L. R. 10 Eq. 160 ; *Crook v. Hill*, L. R. 6 Ch. Ap. 311, 6 E. & I. Ap. 265 ; *Laker v. Hordern*, 1 Ch. D. 644), been held good in favour of existing illegitimate children, where a sufficiently strong indication of intention was apparent ; but there is considerable risk of a bequest to illegitimate children in such general terms failing (see instances of failure in *Dorin v. Dorin*, L. R. 7 E. & I. Ap. 568 ; *Paul v. Children*, L. R. 12 Eq. 16 ; *Re Ayles*, 1 Ch. D. 282 ; *Megson v. Hendle*, 15 Ch. D. 198), and the safe and proper course is, to designate the objects by naming them, or otherwise, so as clearly to identify them. It had been supposed that a gift by will to future born illegitimate children, whether of the testator himself, or another person, was wholly invalid, on the ground of public policy, but the contrary has been established by recent cases as to children born, or begotten, after the will in the testator's lifetime (*Occleston v. Fullalove*, L. R. 9 Ch. Ap. 147 ; *Re Goodwin*, L. R. 17 Eq. 345 ; *Crook v. Hill*, 3 Ch. D. 773). Where the gift is to the future children of a man, or of a woman by a particular man, it is safer, in the present state of the authorities, if the gift is extended to after-born children, to say, “children or reputed children,” as in the text, having regard to the rule of law, that evidence of the paternity is not admissible (see the judgment of Mellish, L. J., in *Occleston v. Fullalove*). It seems, however, that where the gift is necessarily, from the circumstances of the case, to illegitimate children, as where a marriage between the parties is impossible, or where (as in this Precedent) the gift is to the testator's own children, and would therefore be revoked by a marriage (assuming that it is not under a special power of appointment within the exception in s. 18 of the Wills Act), the expression “children,” *simpliciter*, may be used, so as to avoid referring on the face of

Gifts to illegitimate children.

PREC. XVII.

Substitu-
tion of
issue for
children
dying in
testator's
lifetime.
Gift over
and accrues
as to chil-
dren dying
under
twenty-one
without
issue.

III.: PROVID ALWAYS, and I declare that if any of my sd children shall die in my lifetime leaving issue living at my death (d), such issue shall take by substitution, if more than one, in equal shares as tenants in common, all the ppty whether real or personal which such deceased child would have taken if surviving me under the respive devises and bequests contd in this my will; PROVID ALSO and I further declare that if any of my sd children shall die in my lifetime without leaving issue living at my death, or shall survive me and afterwards die without having attained the age of twenty-one years and without leaving issue living at his or her death, then all the ppty whether real or personal hinbefore specifically devised and bequeathed, and also the pecuniary legacies bequeathed to the child so dying, shall, as from the time of the death of the survor of myself and such child, sink into my residuary este, and the share of my residuary este, whether real or personal, hinbefore given to such child, inclusive of any share accruing to him or her by virtue of this present provon, shall go and accrue to the others or other of my sd children or grandchildren to whom my residuary este is hinbefore given, if more than one in the same shares and proportions in which my residuary este is hinbefore made divisible, and be added to and devolve with their, his, or her original shares or share; *Management, maintenance, and accumulation clauses*, p. 749, form xv., *mutatis mutandis* (e); *Advancement clause*, p. 750, form xvii.,

the will to the illegitimacy, and that effect would be given to such a bequest in favour of all children born in the testator's lifetime, and acknowledged and recognised by the putative father as his (see *Re Goodwin*, ubi sup.). As to a gift to children legitimated by subsequent marriage by the law of the father's domicile, see *In re Andros*, Weekly N., 1883, 153. It is established by the cases above referred to, that, if such a gift to a class fails as to some of the intended objects (as where it extends to children born after the testator's death), the whole fund will go to the remaining objects.

(d) As the children are illegitimate, a bequest to a child so dying would not, of course, be saved from lapse by the 33rd section of the Wills Act.

(e) As the property is a mixed fund and is given without any trust for conversion, and without trustees, it is better to insert express management and maintenance clauses, as the Conv. Act, 1881, s. 43, does not apply, and s. 42,

mutatis mutandis; Addition to advancement clause providing for valuation, p. 725: PROVD ALWAYS and I declare that my trees shall invest every legacy and all monies forming pt of any share of my residuary personal este hby given to an infant at their discretion and in their names, &c., investments and power to vary, p. 435, form IV., v., or VI., and shall transfer such investmts to any pson or psons of full age becoming absolutely entled thto; Power to trustees to appropriate fund to answer annuities, p. 687; Clause giving powers of leasing, sale, &c., by reference to Settled Land Act, p. 755; Add any other clauses with reference to the Act which may be required, as in Precedent IV. (f); AND I also empower my trees at any time or times with the consent in writing of such of my sd children as shall then be living and of full age, or the majority in number of them, and if there shall be no such child at the discretion of my trees, to appropriate any pt of my residuary este whether real or personal in or towards satisfson of any share thof, with power for that ppose conclusively to determine values in such mner as they shall think fit, Add proviso at end of form IV., p. 702, *mutatis mutandis*; Power to trustees to determine questions, p. 760; Clauses as to appointment and indemnity of trustees, p. 793, form VI., and p. 796, form XIII.; Appointment of executors and trustees, p. 797; and guardians (g), p. 798.

PREC. XVII.
Investment
clause.

Power to
appro-
priate pro-
perty spe-
cifically.

IN WITNESS, &c.

XVIII.

WILL of PERSONAL property, and REAL estate situate
ABROAD, PROVIDING for WIFE by a bequest in
trust of a LEASEHOLD HOUSE and FURNITURE, and

PREC.
XVIII.

though applicable as to real and leasehold property, would require modification, see p. 450, note.

(f) See p. 812, note (g).

(g) Although this is not a valid appointment, effect would probably be given to it by the Court.

PREC.
XVIII.

LIFE ANNUITY. *Gift of RESIDUE, including property ABROAD, in trust for CONVERSION, the proceeds being SETTLED on the Testator's MALE ISSUE (a), with POWER to male TENANTS for LIFE to CHARGE ANNUITIES for their WIDOWS and PORTIONS for their YOUNGER CHILDREN. ULTIMATE Trust for Testator's DAUGHTERS. POWER to SELL the HOUSE and FURNITURE, and PURCHASE another HOUSE and FURNITURE. The beneficiaries are put to their ELECTION to CONFIRM the DEVISE of the LAND ABROAD (b).*

Commencement, p. 655; Specific legacies, p. 656; Bequest of leasehold house and furniture to trustees for wife for life, with remainder to testator's eldest son K., p. 664, form IV.; Specific devises, p. 690; Immediate pecuniary legacy to wife, p. 675, form VI.; Legacy to testator's younger children at twenty-one, &c., with interim maintenance, p. 677, form XVI., saying, "such of my children except the sd K."; Bequest of annuity to wife for life, p. 684, form I.; Direction to appropriate fund to answer it, p. 687, form XI., mutatis mutandis; Bequest of residuary realty and personalty to trustees, p. 698, form VIII., saying, "all my estates, situate in the colony of —, and all other my real and immoveable estates and hereds of every tenure, including leaseholds, whether situate in the United Kingdom, or any colony or dependency thereof, or elsewhere abroad;" Trust for conversion, p. 699, form I. (c), [If K. is a trustee, insert power to him to purchase,

Residuary
gift includ-
ing colonial
property.

As to en-
tailing land
in a colony.

(a) If the testator's real estate is in England, or in a colony where the English law of entail prevails, the scheme of settling the property on the eldest son would probably be best effected by devising the land in strict settlement, and giving the personalty on the trusts of the proceeds of a sale under the power, as in Precedent XXV. In any case an entail might be created by a devise in trust for sale and for reinvestment in the purchase of land in England to be entailed.

(b) See also Precedents XIX. and XX., and p. 841, note, as to wills affecting land abroad.

As to wills
dealing

(c) In a will dealing with land in a colony not given absolutely, a trust for conversion should in general be inserted, so that the proceeds may be disposed

p. 703, *form VII.*]; AND I DECLARE that my trees shall, &c., *Trust of proceeds to pay debts, &c.*, p. 703, *form VIII.*; *For investment of residue, with power to vary*, p. 705, *form XII.*, "with the consent in writing of the pson or psons of full age, if any, for the time being entled to the income of the sd trust premes, and otherwise at the discretion, &c.; AND SHALL pay the income of the trust premes constituting or representing my sd residuary este, to the sd K. during his life, AND AFTER HIS DEATH shall stand possessed of the sd trust premes, and the income thof, in trust for such son of the sd K. as first or alone attains the age of twenty-one years, his exs, ads, and assigns absolutely; AND IF there shall be no such son of the sd K., then my trees shall hold the sd trust premes, and the income thof, upon trusts in favour of each of my sons in succession, according to seniority, and such son of his as shall first or alone attain the age of twenty-one years, similar to those hinbefore decl'd in favour of the sd K., and such son of his as afsd, but so that no younger son of mine, or any son of such younger son, shall be entled under the trusts afsd, until after the death of every elder son of mine, and unless every such elder son shall die without having a son, who either before or after his father's death attains the age of twenty-one years; PROVD ALWAYS and I declare that it shall be lawful for every son of mine hby made tenant for life of the sd trust premes, either before or after he shall become entled to the rect of the income thof in possion, but subj't and without prejudice to the trusts and powers preceding his life interest, and to the interests created in exercise of such powers, either before or after his marre, by deed revocable or irrevocable, or by will or codicil, to appoint unto or for the benefit of his wife in the event

PREC.
XVIII.
Trusts.
Invest-
ment.
Eldest son
for life.
Remainder
for his
eldest son,
&c.
Gift over
to other
sons of
testator
and their
male issue
in succe-
sion.
Power to
each son
to charge
annuity
for wife.

of according to English law, and to exclude as far as may be questions as to with land the application of colonial law; and express powers of management and leasing, in a colony. &c., until sale should be inserted, as the recent legislation enabling such powers to be omitted is, of course, not applicable; and for the same reason the full trustee clauses should also be inserted.

PRRO.
XVIII.
—

and por-
tions for
younger
children.

of her surviving him, for her life, or any less period, an annuity of £——, or any less annuity, to be charged upon all or any of the sd trust premes, and to be payable, without deduction except for legacy duty, at such times and in such mner as the son of mine exercising this present power may think fit; And I declare that the power lastly hinbefore contd may be exercised as often as the son exercising the same shall marry; PROV'D ALSO and I declare that it shall be lawful for every son of mine hby made tenant for life of the sd trust premes either before or after he shall become entled to the income thof in possion, but subj't and without prejudice to the trusts and powers preceding his life interest, and to the trusts created in exercise of such powers, either before or after marre, by deed revocable or irrevocable, or by will or codicil, to charge all or any of the sd trust premes with the paymt for the portion or portions of his younger child or children by such marre, meaning thby any child or children, who being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry (other than his first or only son who attains the age of twenty-one years), or the issue of any such younger child or children, such issue to be born and take vested interests within twenty-one years from the death of the son of mine exercising this power, of a sum or sums not exceeding in the whole £——, such sum to be an interest vested, &c., *continue as at bottom of p. 580, down to the end of the form, mutatis mutandis, substituting "the son of mine exercising this power," for "the sd, husband," and "legacy duty," for, "succession duty," and omitting the references to the husband's father, and the power to limit a term; Proviso as to cases when charges of rent-charges or portions take effect, p. 582, form XXXVI., substituting "annuity," for, "rent-charge," and saying, "become entled in possion to the income of the sd trust premes." Proviso limiting total amount chargeable for annuities and portions, p. 583, form XXXVII., mutatis mutandis, saying, "have preference and priority according to the order of priority of the trusts in favour of the*

sons of mine, by whom the same resply shall be charged ;”

PREC.
XVIII.

PROVD ALWAYS and I hby declare that in case the trusts

hinbefore decl'd of the sd trust premes representing my

residuary este shall fail or determine, then subj't and without

prejudice to the trusts and powers hinbefore decl'd and cont'd,

so far as the same shall take effect, my trees shall stand

possessed of the sd trust premes, and the income thof, in

trust for all or any the daughters of the sd K., who attain

the age of twenty-one years or marry, and if more than one

in equal shares ; AND IF THERE shall be no such daughter

of the sd K., upon trusts in favour of the daughters of each

of my younger sons in succession, similar to those lastly

hinbefore cont'd in favour of the daughters of the sd K., but

so that no daughter or daughters of any younger son of

mine shall be entled under the trusts afsd, except in the

event of the default or failure of daughters of every elder

son of mine ; AND IN CASE there shall be no such daughter

as afsd of any of my sons, then subj't and without prejudice

to the trusts and powers herein decl'd and cont'd, my trees

shall stand possessed of the sd trust premes in trust for all

or any my own daughters or daughter who survive me, and

attain the age of twenty-one years, or marry, or die in my

lifetime leaving issue surviving me, and if more than one, in

equal shares. [*Maintenance and accumulation clauses as to*

sons, and daughters, and grandchildren, p. 744, form v., mu-

tatis mutandis] ; *Advancement clause, p. 746, form ix. ;*

PROVD ALWAYS and I hby declare that in case any of the

devises, bequests, or dispositions herein cont'd of my real

or leasehd, or immoveable ppty, situate in the sd colony

of —, or elsewhere abroad, would but for this present

proviso fail wholly or partially to take effect, owing to this

my will being for any reason ineffectual to dispose of the

same, the same shall take effect under the doctrine of

election, and shall thby bind my wife, and children, and

grandchildren, and the husbands of any daughters or grand-

daughters of mine, who shall accordingly, at the request in

writing and to the satisfson of my trees, and at the cost of

Ultior trust for daughters of eldest son of testator.

In default, for daughters of testator's younger sons.

Ultimate trust in default of issue of testator's sons for testator's daughters.

Clause putting beneficiaries to election as to foreign or colonial property.

PREC.
XVIII.
—

my este, and, as regards my children and grandchildren, as they shall respily attain the age of twenty-one years, execute, complete, perfect, and do all such instrumts and acts as may be necessary for evidencing such election, and giving full effect to such devises, bequests, and dispositions; And I declare that in case my wife or any child or grandchild of mine or the husband of any daughter or granddaughter of mine shall refuse or neglect to comply with any such request in writing of my trees, or shall otherwise fail to execute, complete, perfect, or do such instrumts or acts as aforesaid or any of them, then the pson so neglecting or refusing, and his or her children (or in the case of the husband of a daughter or granddaughter of mine, such daughter, or granddaughter and her children), shall forfeit all benefits hby, or by any codicil hto, given to him, her, or them, and the same not being an interest in my residuary este shall fall into my residuary este, and being an interest in my residuary este shall go to the other psons entled to my residuary este as if my wife, or child, or grandchild, incurring such forfeiture, had died before me, and in the case of a child or grandchild of mine, without issue, and had not taken any interest in my residuary este under this my will; *Declaration as to income until conversion*, p. 704, form x.; *Power of management of*, "the real, leasehd, and immoveable ppty hinbefore devised and bequeathed in trust for sale," p. 751; *Leasing power*, p. 753; *Power to raise money on mortgage*, p. 703; *Power to appoint agents to get in or manage property abroad*, p. 786; *Power to trustees to sell house and furniture bequeathed to wife for life*, p. 760; And the money arising therefrom shall sink into my residuary este, but so that my wife shall during her life be entled to the income arising from the same; *PROVD ALWAYS* and I empower my trees at any time, at the request in writing of my wife, to lay out any sum arising from a sale of the sd furniture and effects, or any pt thof, under the power lastly hinbefore contd, in the pchase of furniture or household effects, to be held upon the like trusts as are hinbefore decld concerning the furniture

Power to
sell house
and furni-
ture, with
ancillary
clauses.

and effects bequeathed in trust for my wife for life, and also to lay out any sum arising from a sale of the sd leasehd premes hinbefore bequeathed to her for life in the pchase of a messuage, &c., *continue power to purchase a house as residence for wife*, p. 759, *mutatis mutandis*, saying, "upon the like trusts as are hinbefore decl'd concerning the sd leasehd messuage hinbefore bequeathed in trust for my wife for life, or as near thto as circes shall admit;" [If the testator has any land in England insert such of the clauses having reference to the Settled Land Act as may be required, see Precedent IV.]; *Power to trustees to determine questions*, p. 760; *Trustees' receipt clause*, p. 791, see note (g); *Power to appoint new trustees*, p. 792; [Power to appoint special trustees of property abroad, p. 793; *Power to delegate trusts to resident trustees*, p. 794, form IX.; *Declaration as to money received by resident trustees*, p. 795]; *Trustees' indemnity and reimbursement clause*, p. 795, form XI.; *Declaration as to devolution of trustees' powers*, p. 796; *Appointment of executors*, p. 797; *Power to executors to compromise*, p. 798; *Appointment of guardians*, p. 798.

IN WITNESS, &c.

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XIX.

WILL of Man having PROPERTY in a COLONY, appointing DISTINCT TRUSTEES and EXECUTORS for PROPERTY in ENGLAND and the COLONY, and giving RESIDUE in trust for WIFE during WIDOWHOOD, remainder as to a FIXED SUM for DAUGHTER, if LIVING, subject to her MARRYING with CONSENT of MOTHER, otherwise to her Issue. RESIDUE to a SON, if LIVING. SUBSTITUTED gifts to the ISSUE of the Son and Daughter, if dead at time of distribution. CROSS TRUSTS on FAILURE of the PRIMARY Trusts, and ULTIMATE Trust. PROCEEDS of COLONIAL property, after payment of expenses

PREC. XIX
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PREC. XIX.

and debts there, to be REMITTED to ENGLAND. POWER to COLONIAL TRUSTEES on returning to England to ACT as ENGLISH TRUSTEES. SPECIAL TRUSTEE and EXECUTORSHIP Clauses.

Commencement, p. 655; *Specific legacies*, p. 656; *Immediate pecuniary legacy to wife*, p. 675, *form VI.*; *General legacies*, p. 674; *Gift of realty and residuary personalty*, "except the real and personal este and ppty in the colony of — hinafter devised and bequeathed to my colonial trees, and except what I otherwise dispose of by this my will, or any codicil hto," to *English trustees A. and B.*, p. 698, *form VIII.*; *Upon trust for conversion*, p. 699, *form I.*; *To pay debts, &c.*, p. 703, *form VIII.*, "other than the debts owing by me in the sd colony, the paymt whof is hinafter provd for, but inclusive of such debts in case and so far as such provon for the paymt thof shall be insufficient;" *For investment of residue*, p. 705, *form XII.*; *For payment of income to widow during widowhood*, p. 708, *form I.*; AND AFTER the death or marre of my sd wife, which shall first happen, shall raise out of the sd trust premes the sum of £—, and shall hold the same sum upon the trusts and with and subjt to the powers and provons following (that is to say), UPON TRUST to pay the same to my daughter L. for her absolute benefit in case she shall be living at the death or marre of my wife, or at my death if my wife should die before me (which time is hinafter called the time of distribution), and shall be then unmarried or shall have married during my lifetime or after my death, with the prior consent or subsequent approval in the latter case of my wife, signified at any time before the death or marre of my sd wife: AND IN CASE my sd daughter shall have married during my lifetime or after my decease, with such consent or approval as afsd, and shall have afterwards died before the time of distribution, then in trust for the child or children of my sd daughter who shall be living at the time of distribution, and shall, being male, attain the age of twenty-one years, or being female.

Gift of residue, except property in colony.

Trusts.

income to wife during widowhood.

Trusts of fixed sum.

For daughter, if living, unless she marries without consent.

Substitution of issue for daughter, if dead.

attain that age or marry, if more than one, in equal shares ; PREG. XIX.
 BUT IN CASE my sd daughter shall marry after my death Gift over on marriage of daughter without consent to her children.
 and during the widowhood of my sd wife without such consent or approval as afsd, then upon trust, *for children or remoter issue of daughter as widow shall appoint*, p. 719, *form II. or III.* ; AND IN DEFAULT of and subjt to any such appointmt upon trust, whether my sd daughter shall be living or dead, for the child or children of my sd daughter who shall be living at the time of distribution or shall be afterwards born before the youngest of such children for the time being in existence attains a vested interest (d), and who being male attain the age of twenty-one years, or being female attain that age or marry, if more than one, in equal shares ; BUT SO THAT during the life of my sd daughter the income of the sd trust premes shall be paid to the psons who would be entled thto, or applied in the mner and for the pposes in and for which the same would be applicable if she were dead ; *Hotchpot*, p. 723 ; [*Provision as to distribution when daughter attains a certain age*, p. 740, *form XIV.*] ; PROVID Subject to trusts aforesaid to sink into residue.
 ALWAYS and I declare that if the sd sum of £—— shall not become absolutely vested under the trusts afsd, then the same sum and the income thof, and all accumulations thof, or so much thof as shall not become vested or be applied under the trusts and powers herein decl'd and cont'd or by law vested in my trees (e), shall, subjt and without prejudice to the trusts and powers afsd, sink into the residue of the sd trust este and premes, and be subjt to the trusts and provons hinafter decl'd and cont'd concerning the same ; AND I Trusts of residue.
 HBY further declare that the residue of the sd trust este and premes after raising the sd sum of £—— shall, from and after the death or marre of my wife, or from and after my death, should she die before me, be held by my trees upon the trusts and with and subjt to the powers and provons following, that is to say, IN TRUST for my son —— if he For son, if living at

(d) See above, p. 715, note (g).

(e) These words have reference to the statutory power of maintenance.

PREC. XIX. shall then be living for his absolute benefit, and in case he shall have died, then in trust for the child or children (if any) of my sd son who shall be then living and shall, being male, attain the age of twenty-one years, or being female, attain that age or marry, if more than one, in equal shares: AND IN CASE my sd son shall have died without leaving any such child or children, then (subjt to the trusts hinbefore decl'd) upon the like trusts and for the like pposes as those hinbefore decl'd concerning the sd sum of £——; **Ultimate trusts.** PROVD ALSO and I declare that if the sd trust premes, including the sd sum of £——, or any pt or pts thof, shall not become absolutely vested under the trusts hinbefore decl'd, then the sd trust premes and all accumulations thof, or such pt or pts thof as shall not have become vested or been applied under the trusts and powers herein decl'd and cont'd or by law vested in my trees, shall (subjt to the trusts hinbefore decl'd) be held by my trees in trust for my brother — absolutely, if he shall be living at the time of the determination or failure of the prior trusts hinbefore decl'd, and if he shall then have died leaving a child or children then living, then in trust for such child or children, if more than one, in equal shares, and in default of any such child or children **Investment clause.** then in trust for my cousin — absolutely; PROVD ALWAYS that it shall be lawful for my trees at their discretion to invest the sd sum of £——, or any pt thof, in or upon any of the investmts hinbefore authorised, with power at the like discretion to vary such investmts, and the investmts for the time representing the sd sum of £—— shall be held upon and for the like trusts and pposes as are hinbefore decl'd concerning the sd sum of £——; *Power to allot specific property in satisfaction of,* “the sd sum of £—— or any pt thof,” p. 701; *Advancement clause as to children and grandchildren,* p. 745, form VII., *mutatis mutandis* (f); *Declaration*

(f) The maintenance and accumulation clauses are omitted in reliance on the statute. If inserted, they may be according to forms I. and II., or form IV., p. 741, *mutatis mutandis*.

as to income of real and personal estate until conversion, PREC. XIX.
 p. 704, form x.; *Power to manage and let until conversion*,
 p. 758, forms II. and III.; I DEVISE AND BEQUEATH unto ——— Devise and
 and ———, hinafter called my colonial trees, all my real and bequest of
 personal este and effects situate and being at the time of my colonial
 death in the Colony of ———, expressly including all debts property.
 and other choses in action which shall then be recoverable
 by action or other legal proceedings in such colony, upon
 the like trusts, and with and subjt to the like powers and
 provons with respect to the sale, conversion, and getting in
 of the same, and the managemt and leasing thof until sale,
 as are hinbefore decld and contd with reference to my
 general este and effects hinbefore devised and bequeathed to
 my trees; AND I DIRECT that my colonial trees shall stand Trusts.
 possessed of the net proceeds arising from the sale, conver-
 sion, and getting in of the sd real and personal este and
 premes hinbefore devised and bequeathed to them, and of the
 net rents, profits, and annual income thof until conversion,
 after paymt thereout of all outgoings and expenses (g) of
 managemt and realisation, or otherwise incurred by my
 colonial trees, and any debts owing by me in the sd colony
 of ——— at my decease, upon trust from time to time to remit
 such net proceeds, rents, profits, and income as and when
 the same shall be realised or received by them to my trees,
 to be resply held and applied by my trees upon the trusts
 and in the mner hinbefore provd concerning the proceeds of
 the realisation of my general este and the income thof
 resply, but not so as to increase or duplicate the sd sum of
 £——; I AUTHORISE my trees, except as to any ppty which
 may for the time being be legally vested in my colonial
 trees, and my colonial trees as to such last-mentd ppty,
continue power to determine questions, p. 760, saying, "my
 trees or colonial trees resply;" [If there is land in England
 insert any clauses with reference to the Settled Land Act which

(g) As to the liability to Colonial taxes and duties, see *Peter v. Stirling*,
 10 Ch. D. 279.

FORM. XII. *may be required as in Precedent IV.]; AND I DECLARE that the rect of my trees and of my colonial trees resply, continue trustees' receipt clause, p. 791, mutatis mutandis; Power to appoint new trustees, with variations for several sets, p. 792, saying after "incapable to act," "or as to my trees or any of them reside abroad, or as to my colonial trees or any of them cease to reside in the colony of — ;" PROVID ALWAYS and I declare that in the event of the sd — and —, the colonial trustees, or either of them returning to England, whether in my lifetime or after my death, they or he shall, if willing, be at liberty to assume the general trusteeship of my will jointly with the other trees or tree for the time being (if any), or alone if there shall be no other trees or tree, in which case a deed shall be executed for evidencing their or his acceptance of such trusteeship, and vesting the trust este in them or him, either jointly or alone as aforesaid; Trustees' indemnity and reimbursement clause, p. 795, form x.; Declaration as to devolution of powers of trustees, p. 796; The same for colonial trustees; Appointment of colonial trustees executors "as to the ppty and premes hereinbefore bequeathed to them," and of general trustees, "and the sd, colonial trustees, if and when they shall resply return to England," General executors, p. 798, form vi., omitting direction as to expense of limited probate: I AUTHORISE my acting general exors or exors for the time being as to my general este, and my acting special exors or exors for the time being as to my este in the sd colony, To compromise, &c., p. 798; Appointment of guardians, p. 798.*

Power to colonial trustees on returning to England to assume general trusteeship.

IN WITNESS, &c.

XX.

CONCURRENT WILL *disposing of* REAL ESTATE *in*
a FOREIGN COUNTRY (a).

PREC. XX.

Commencement, p. 655, *form III.*: I HBY DEVISE all my real and immoveable ppty including leasehds situate in [the Republic of France] to K. of —, and L. of —, for all my este and interest therein, and I hby institute them my hrs in respect thof, UPON TRUST to sell the

(a) Where the testator is possessed of land situate in a colony or foreign country, or in Scotland, it may be necessary, or more convenient, to make a separate will as to such property. As to the practice of the Probate Court where there is a separate will of foreign property, see *Re Astor*, 1 P. D. 150. As to wills of Scotch property, see 1 Jarman on Wills, 4th ed., p. 9; "The Titles to Land Consolidation (Scotland) Act, 1868," 31 & 32 Vict. c. 101, ss. 19, 20, 21; and "The Conveyancing (Scotland) Act, 1874," 37 & 38 Vict. c. 94, ss. 39, 40, 46, 51. Occasionally there may be doubts whether a testator is domiciled in England or abroad; and as the construction of a will of personalty and the rights of persons claiming under it are regulated by the law of the testator's domicile, it will be proper in this case to have the will settled both by an English and a foreign lawyer, so that it may take effect, whatever his domicile may be. See as to the form of the execution of a will of personalty by a British subject wherever domiciled, 24 & 25 Vict. c. 114. The construction of a will disposing of land is regulated by the *lex loci situs*, and, therefore, such a will should be settled by a lawyer conversant with the law of the place where the land is situate. In case, however, the testator is *in extremis*, so that there is no time to procure the assistance of a foreign lawyer, the better course appears to be, to make a short concurrent will, disposing only of the foreign land, and in the principal will to put all persons to their election to confirm it (see the form of an election clause at p. 833). The question whether the formalities necessary for the validity of a will disposing of land are those of the *lex loci actus* or the *lex loci situs*, is answered differently by the laws of different countries, but according to the better opinion this also should be governed by the *lex loci situs*, see Story, Conflict of Laws, sec. 474, *ad seq.* The safer course, in the absence of special information, is to execute the will so that it will be valid in either case. It is apprehended that a holograph will, dated and signed by the testator (which is valid in most countries where the law is founded on the Civil Law) and executed in the presence of three witnesses, all signing at the same time in the presence of the testator and each other, so as to have been valid under the Statute of Frauds, would be valid in most countries. See further on this subject, and generally on the question by what local law wills are governed, 1 Jarm. Wills, ch. 1; 4 Dav. Prec. 347; and as to the wills of aliens, see *Bloxam v. Pavre*, 8 P. D. 101.

As to wills
of property
situate
abroad.

PREC. XX. same and give effectual refts for the pchase-money thof and to let and manage the same in the meantime with the same discretionary powers as to the time and mode of sale and otherwise in relation thto, and as to the letting and management of the ppty as if they were absolute owners thof, AND UPON TRUST to pay and remit the net proceeds of such sale and the net rents and profits in the meantime (after payment of all expenses and outgoings) to M. of —, and N. of —, or other my exs or exor for the time being in England to be held by them or him upon the trusts and for the purposes decld concerning the same by my will, bearing even date herewith.

IN WITNESS, &c.

XXXI

PREC. XXI. *WILL of a WIDOW in favour of her CHILDREN or ISSUE UNDER a POWER of Appointment contained in her husband's Will, and declaring TRUSTS of her OWN PROPERTY by Reference.*

Recital of husband's will.

Commencement, p. 655; WHAS my late husband K. by his will dated, &c., and proved with a codicil on, &c., directed that the trees thof should stand possessed of the investmts thby directed to be made of the proceeds of the sale calling in and conversion thby directed to be made of his real and residuary personal este and of the other money forming pt of his este, and of the income of such investmts, and of the rents, profits, and annual produce of such real and personal este until the conversion thof, upon trust after my death for such one or more, &c., *continue recital of power of appointment among children or issue*; NOW IN EXERCISE of the sd recited power and of every or any other power in this behalf me enabling, I APPOINT AND DECLARE that the trees or tree for the time being of the sd will of my sd husband shall from and after my decease stand possessed of the trust funds and ppty representing or constituting the residuary real and

Appointment.

personal este of my sd husband or the proceeds of the sale calling in and conversion thof, and of the income and annual produce thof, upon the trusts and with and subjt to the powers and provons hinafter deold and contd concerning the same, that is to say, *trusts for children or issue, see Precedent IV. (b); [Maintenance and accumulation clauses, p. 741,*

PREC. XXI.

(b) In wills exercising special powers of appointment the following points require attention :—Care must be taken not only to keep within the power as regards the objects in whose favour the appointment is made, but also to avoid transgressing the rule against perpetuities, either as regards the objects of the appointment, or the period at which their interests are to vest ; the test as to the latter point being, whether the appointment, if inserted in the instrument creating the power, would have been within the legal limits. The share of a child cannot, therefore, be settled on him or her for life with remainder to his or her issue, unless the power expressly extends to grandchildren ; and if it does so extend, it would still in general be necessary, in order to keep within the legal limits, that the issue taking in remainder should not only be born, but should also acquire vested interests within twenty-one years from the death of the testator. Even where the appointment is confined to children, and does not extend to remoter issue, it may be necessary not to postpone the vesting of the shares to a later age than twenty-one, unless the trust is specially framed so as to keep within the legal limits as in form x., p. 716. If the shares are settled it should also be remembered that a special power of this nature cannot be delegated, so that a power of appointment among the issue cannot be given to the parent ; and for the same reason, when the life interest of the child is made determinable on bankruptcy, &c., the usual trust for the application of the income after forfeiture at the discretion of the trustees for the benefit of the child and other objects, even though the latter are within the power, cannot, it is conceived, be inserted, unless such a delegation is expressly authorised by the power. If it is desired to provide for the event of a child dying in the lifetime of the testator, this cannot be done by an appointment to the deceased child, or its representatives (the 33rd section of the Wills Act not applying to appointments under special powers), and the only course in such a case will be, to appoint a share to the issue of the deceased child (if they are objects of the power) by substitution, or to leave the share unappointed, so as (if the case admits of it) to devolve on the representatives of the deceased child under the trust in default of appointment, with the aid of the hotchpot clause. Sometimes, however, an appointment in excess of the power may be made effectual, by giving benefits to the persons entitled in default of appointment and putting them to their election to confirm it. The trusts of an appointment under a special power must generally be executed by the trustees of the instrument creating the power, and not by those of the will. As to the power of the testator to supersede the original trustees, see 4 Dav. Prec. p. 277, note. A will exercising a power must be executed in the usual manner, although special formalities may be required by the power, see s. 10 of the Wills Act.

Points to be attended to in wills exercising powers of appointment among children or issue.

PREC. XXI. *unless omitted in reliance on the statute, and] Advancement clause, p. 745, mutatis mutandis, except that the investment of the accumulations should be in securities authorised by the instrument creating the power, and substituting "the trees or tree of the sd will of my sd husband," for, "my trees;" Specific legacies, p. 656; General legacies, p. 674; Gift of residue to trustees of will, p. 698, form VIII; Upon trust for conversion, p. 699; To pay debts, &c., p. 703; For investment of residue, p. 705; AND SHALL stand possessed of my sd residuary trust este and the income thof upon the like trusts and with and subjt to the like powers and provons as are hinbefore decld and contd concerning the sd trust premes representing or constituting the residuary este of my sd late husband, with the substitution of my trees for the trees of his will; PROVD ALWAYS and I declare, &c., ultimate trusts of residuary estate, p. 736; Declaration as to income until conversion, p. 704; The rest of the Precedent may be as in Precedent IV., including the appointment of guardians (c).*

Trusts of
residue by
reference.

IN WITNESS, &c.

XXII.

PREC. XXII.

WILL under SPECIAL POWERS of Appointment in a Settlement and prior Will appointing a LEGACY to a DAUGHTER, and subject thereto ONE MOIETY of the funds to a SON for LIFE DETERMINABLE ON BANKRUPTCY, &c., with remainder to his CHILDREN, and the OTHER MOIETY to a DAUGHTER for LIFE, with remainder to her CHILDREN, and disposing of the Testator's OWN PROPERTY in like manner. HOTCHPOT Clause (d).

(c) See as to guardians, p. 814, note.

(d) See note to last Precedent, p. 843, especially as to the determinable life estate of the son, and as to the form of the trusts for the issue of the son and daughter. The object of the hotchpot clause at the end of the will is to

Commencement, p. 655 ; **WHAS** under or by virtue of the PRÆC. XXII.
settlemt made on my marre with my late wife, dated, &c., Recital of
and expd, &c., and the will dated, &c., and a codicil thto, powers.
dated, &c., of my late father, which were resply proved, &c.,
divers trust funds and ppty are settled in trust (but as to
the trust premes settled by the sd will and codicil of my sd
father subjt to the life interest of my mother therein) for
myself during my life, and after my decease upon trusts for
my issue, under which I have a testamentary power of
appointmt over such respive trust funds and ppty in favour
of all or any exclusively of the others or other of my
children or remoter issue in such shares and mner as I may
think fit ; Now **IN EXERCISE** of the respive powers for this Appoint-
ppose given to me by the sd settlemt and will and codicil ment
resply, and of all other powers, if any, enabling me in this
behalf, I do hby direct and appoint that the trees or tree
for the time being of my sd marre settlemt shall as soon as
may be after my decease by or out of the trust funds and
premes held upon the trusts of the sd settlemt raise or set
apart and appropriate the sum of £—— or trust funds or of sum of
investmts which such trees or tree shall deem to be of money.
equivalent value, and shall stand possessed of the same or
of the trust funds and premes from time to time representing
the same (and so that such appropriation shall not affect
the power of transposing investmts in my sd marre settlemt
contd) ; **UPON THE LIKE TRUSTS** and with and subjt to the Upon
like powers and provons for the benefit of my daughter L. trusts for
and her issue, and with the like ulterior trusts for the benefit daughter
of my son M. and his issue in the event of the default or and son.
failure of the issue of my sd daughter as are hinafter decld
and contd concerning the moiety of the residue of the sd
trust premes in favour of my sd daughter and her issue and
otherwise as hinafter mentd ; **AND I FURTHER** appoint and Appoint-
direct that all the residue of the sd trust funds and ppty ment of
residue.

redress any inequality caused by the possible exclusion of some of the children from sharing in the appointed funds.

PREC. XXII. held upon the trusts of my sd marre settlemt and also all and singular the trust funds and ppty held upon the trusts of the sd will and codicil of my sd father as afsd, and the trust premes from time to time representing the same resply shall from and after my decease remain and be, and that the trees or tree for the time being of the sd settlemt and will and codicil resply shall stand possessed thof resply (but subjt as to the trust premes held under the sd will and codicil to the life interest of my mother therein); UPON THE TRUSTS hinafter decld concerning the same, that is to say, As to one moiety of the sd respieve trust premes; UPON TRUST that the sd respieve trees or tree shall if my son M. shall not, &c., *life interest determinable on bankruptcy, &c.*, p. 708, and *trust of income after forfeiture for the persons who would be entitled if the son were dead*, p. 710, form VIII., AND FROM and after the decease of my sd son the sd respieve trees or tree shall stand possessed of the capital and income of the sd moiety of the sd respieve trust premes, IN TRUST for the children or child of my sd son who shall be born in my lifetime and shall attain the age of twenty-one years, or in the case of daughters marry under that age, and the children or child of my sd son who shall be born after my decease (e) and shall be living at the expiration of twenty-one years from my decease, or in the case of daughters shall have previously married, and if more than one in equal shares; [*Usual maintenance and accumulation clauses as to son's children*, p. 741, *unless omitted in reliance on the statute and*] *usual advancement clause*, p. 745, *modified as in the last Precedent*; AND I FURTHER appoint and declare that the sd respieve trees or tree of the sd settlemt and will and codicil resply shall from and after my decease stand possessed of the other moiety of the sd respieve trust funds and ppty held upon the trusts of the sd settlemt

Upon trusts.

As to one moiety for son till bankruptcy.

After death of son for his children.

Appointment of other moiety.

(e) This extension of the appointment to issue born after the testator's death, though not too remote, as the shares are made to vest within twenty-one years from his death, would often go beyond the power, which is commonly restricted to issue born in the appointor's lifetime.

and will and codicil resply (subjt as afsd), and the trust premes from time to time representing the same resply and the income and annual produce thof resply, UPON TRUST to pay such income and annual produce to my sd daughter L. during her life, and so that during coverture and within the period of twenty-one years from my decease she shall not have power to anticipate the same (f), AND FROM and after her death as to as well the capital of the same moiety as to the income thof upon the like trusts and with and subjt to the like powers and provons for the benefit of the children or child of my sd daughter born in my lifetime or after my decease as are hinbefore decl'd and contd concerning the first mentioned moiety of the sd trust premes for the benefit of the children or child of my sd son born in my lifetime or after my decease ;

PROVD ALWAYS and I declare that in case either of them my sd son or daughter shall die without leaving any child who shall attain a vested interest under the trusts hinbefore decl'd, then the moiety of the sd respive trust premes hinbefore appointed in favour of my sd son or daughter as the case may be, as to whom there shall be such default or failure of children, and the income thof, or so much thof as shall not have been applied or disposed of under the trusts or powers vested in the sd respive trees or tree, shall from and after the decease of such son or daughter as the case may be, or such default or failure of his or her children, whichever shall last happen, be held upon the like trusts and with and subjt to the like powers and provons for the benefit of the other of them my sd son or daughter and his or her children or child born in my lifetime or after my decease as are hinbefore decl'd and contd concerning the original moiety hinbefore appointed for the benefit of such son or daughter

PRINC. XXII.

Upon
trust for
daughter
for life,
and for her
children.

Gift in
case son or
daughter
dies with-
out issue.

(f) As to the validity of a restraint on anticipation in an appointment under a limited power with reference to remoteness, see 3 Dav. Prec. p. 157, note (z); see also *Re Ridley*, 11 Ch. D. 645. The restriction in the text to twenty-one years appears to be necessary as to the fund derived under the marriage settlement, and possibly also as to the other fund.

PREC. XXII. and his or her children or child as aforesaid; *Specific bequests*, p. 656; *General legacies*, p. 674; *General devise and bequest of his real and personal estate to trustees*, p. 698; *Trusts for conversion*, p. 699; *Payment of debts, &c.*, p. 703, and investment, p. 705; *Trust as to one moiety for the son for life*, p. 708, with remainder to all his children, pp. 713, 714; *And as to the other moiety for the daughter and all her children by reference*, p. 730; and giving the son and daughter a power of appointment among their respective children; **PROVD ALWAYS** and I declare that no child of my said son or daughter as the case may be shall be entitled to any share of the moiety of my residuary estate or the trust premises representing the same the trusts whereof are hereinbefore decided in favour of the children of my son or daughter respectively without bringing the share, if any, to which he or she may become entitled of the trust premises hereinbefore appointed under the respective powers contained in my said marriage settlement and in the said will and codicil of my said father into hotchpot and accounting for the same accordingly. *Other usual clauses relating to testator's own property.*

Hotchpot
clause.

IN WITNESS, &c.

XXIII.

**PREC.
XXIII.**

WILL of a MARRIED WOMAN UNDER a POWER in her marriage Settlement in favour of her HUSBAND. A SHORT form (g).

THIS IS THE LAST WILL of me, A., the wife of B. of, &c., **IN EXERCISE** of a power contained in an indenture dated,

As to wills
of married
women.

(g) The testamentary power of a married woman is now by virtue of the Married Women's Property Act, 1882 (as to which, see p. 439, note), much enlarged, and is as complete as that of a man as to all property constituting her separate estate; but if she was married before 1883, she is subject to the same disability as before the Act as to her power of disposing of property acquired before 1883. The will in this Precedent is made under the power

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XXIII.
—

&c., being a settlemt executed on my marre with my sd husband, and of every other power hereunto me enabling, I appoint and direct that in case there shall be no child of my sd marre, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then the trees or tree for the time being of the sd indre of settlemt shall from and after my decease, or such default or failure of our issue, which shall last happen, and subjt to the trusts and powers of the sd settlemt or by law vested in such trees or tree, and to every exercise of such powers, stand possessed of the stocks, funds, secs, and ppty representing the sum of £—, or, “the trust funds and premes” thby settled [and all ppty becoming subjt to the trusts of the sd settlemt by virtue of the provon therein contd for the settlemt of my other and after acquired ppty] IN TRUST for my sd husband, his exs, ads, and assigns, absolutely; AND I DEVISE, bequeath, and appoint all other ppty whether real or personal belonging to me for my separate use or over which I shall at the time of my death have any absolute power of appointmt or disposition by will unto my sd husband, his hrs, exs, ads, and assigns absolutely; *Appointment of B. executor*, p. 797.

IN WITNESS, &c.

in the ordinary ultimate trusts in a marriage settlement of the wife's property in default of issue of the marriage. The old form of these trusts was for the wife absolutely if she survived the husband, but if she predeceased him gave her a power of appointment by will (as in the settlement recited in the next Precedent); and a will made during the coverture could only operate as an exercise of the power, and not as a disposition of her interest if she survived the husband, as to which she had no testamentary capacity during the coverture, and it was necessary that she should make a new will in that event. *Trimnell v. Fell*, 16 Beav. 537; *Price v. Parker*, 16 Sim. 198; *Re Wollaston*, 9 Jur. N. S. 727; *Noble v. Willock*, L. R. 8 Ch. Ap. 778. Where the settlement was before 1883 the law in this respect is not altered by the Married Women's Property Act, 1882; but under a settlement since 1882, containing trusts in this form (but which would not now be the proper form, see SETTLEMENTS, p. 452), a will might it is conceived be made to operate in both events; see the next Precedent.

XXIV.

PREC. XXIV.

WILL of a MARRIED WOMAN under a POWER in her Marriage SETTLEMENT and disposing of her SEPARATE ESTATE. Bequest of LEGACIES and ANNUITY. SPECIAL GIFT of annuity FUND after death of annuitant. Gift of LEGACIES in trust for SISTERS and their ISSUE. LEGACY in trust for CHILDREN of another SISTER who does not take a life interest. Direction to pay INCOME of MINORS to their MOTHER for their maintenance. Gift of RESIDUE to BROTHERS. Clause PRESERVING operation of Will in event of testatrix SURVIVING her husband.

Commence-
ment.
Recital of
marriage
settlement.

I, A., the wife of B., of, &c., declare this to be my last will, WHAS by a settlemt made on my marre with my sd husband, dated, &c., and expd to be made between myself by my then name of — of the first pt, my sd husband of the second pt, and C. and D. of the third pt, the several stocks, funds, and ppty therein mentd, and certain interests which were then in reversion or contingency or unascertained, but which have since fallen into possion or been ascertained and received by the trees of the sd settlemt were settled upon trusts for the benefit of myself and my sd husband during our respive lives, and afterwards for the issue of our marre, and in the event of such default or failure of issue of our marre as therein mentd, then if I should survive my sd husband in trust for myself absolutely, but if I should die in the lifetime of my sd husband then subj to his life interest upon such trusts and generally in such mner in all respects as I should, notwithstanding my coverture, by will appoint, and the sd indre contains a provon for the settlemt of my other or future ppty accruing during my sd coverture (except as therein mentd) upon the like trusts; Now IN EXERCISE of the power given by the sd settlemt as afsd and of any other power so enabling me, I hby appoint

Appoint-
ment.

and direct that if my sd husband shall survive me, and in case of such default or failure of issue of our marre as in the sd settlemt is mentd, all the trust funds and ppty which are now or may hereafter become subjt to the trusts of the sd settlemt, and the income thof or so much thof as shall not have become vested or been applied under the trusts or powers by the sd settlemt or by law vested in the trees or tree thof, shall from and after the death of my sd husband and such default or failure of issue as afsd be held by the trees or tree for the time being of the sd settlemt (a) upon the trusts following (that is to say), UPON TRUST to pay thereout my funeral and testamentary expenses and debts, and in the next place to pay or provide for thereout the following legacies and annuities free of duty thereon, *Bequest of legacies*, p. 674, *and an annuity*, p. 684; AND I DIRECT the sd trees or tree to set apart and invest in any such investmts as are authorised by the sd settlemt a sufficient capital sum to answer the sd annuity hinbefore bequeathed, and upon the death of the sd annuitant, I BEQUEATH the fund so set apart to such of my brothers and sisters (other than my sister C.) as shall then be living or shall be dead leaving issue then living (b), if more than one in equal shares to the intent that the shares so expd to be given to such of my brothers as shall be dead leaving issue shall vest in and be paid to their respive personal representatives as pt of their personal este (c), and that the shares so expd to be given to my said respive sisters shall be retained by the said trees or tree, and held upon the trusts hinafter decl'd concerning the legacies of £—— each next hinafter bequeathed in trust for them resply; I DIRECT that the sd trees or tree

PREC. XXIV.
Upon trust to pay debts,
and legacies and an annuity.
Sums to be set apart to answer annuity.
Bequest after death of annuitant.
Legacies for benefit of sisters.

(a) Note that the trusts of the will are to be executed by the trustees of the settlement and not by trustees appointed by the testatrix.

(b) Care must be taken that the vesting in this case is not postponed to too late a period, see next page, note. The fact that the objects of the ultimate gift are *in esse* would not save it; see *Hodgson v. Halford*, 11 Ch. D. 959.

(c) See p. 718, note (a).

PREC.
XXIV.

Trusts of
legacies.

Sister for
life

and for her
issue.

Gift over
on death
of sister
without
issue.

Gift of
another
legacy to
the chil-
dren of
another
living
sister.

shall set apart the sum of £—— or investmts which they shall consider of equivalent value for each of my sisters (other than my sister C.) to be held upon the following trusts, that is to say, UPON TRUST to vary the investmt thof at any time in any mner authorised by the sd settlemnt at discretion, and to pay the income of each of such sums and the investmts thof to the sister of mine for whom the same shall be intd during her life without power of anticipation during coverture (d), and after her decease shall hold the capital thof, IN TRUST, &c., for issue of sister, as she may appoint, p. 713, in default for her children at twenty-one, &c., p. 714 (d); Hotchpot clause, p. 723; Advancement clause, p. 745; AND IN CASE any of my sd sisters shall have no child who shall attain a vested interest under the trusts hinbefore contd then subj to the trusts afsd the legacy hinbefore bequeathed in trust for her and the trust funds representing the same shall sink into the residue of the sd trust premes; AND I DIRECT that the sd trees or tree shall set apart the sum of £—— or investmts which they or he shall consider of equivalent value, with power to transpose such investmts in mner afsd, and shall hold the same IN TRUST for the children or child of my sd sister C. who shall, &c., p. 715, form VIII.; AND I DIRECT that the income of the expectant shares of such respive children shall during

As to
general
power of
appoint-
ment by
will only.
Perpetui-
ties.

(d) The power of appointment in this case although general, being *testamentary only*, must be exercised with the same regard to the rule against perpetuities as if it were a special power; see *Re Powell*, 39 L. J. Ch. 188; 18 W. R. 228. This extension of the rule is likely to prove inconvenient, and to lead to miscarriage in practice, as a general bequest in a will is commonly made to extend (and would without express words extend) to property, if any, over which the testator has a general testamentary power of appointment (which is practically regarded as equivalent to ownership), without enquiring into the existence of such powers, or regard to the rule in question. The restraint on anticipation in this case must therefore be restricted, as above, p. 847, as to any sister who was not born at the date of the settlement; and the class of issue to take, and the vesting of their shares, must also be restricted in that case, as in Precedent XXII., p. 846; but in this Precedent it is assumed that the sisters were all born before the settlement.

their respive minorities in the case of sons, and minority and spinsterhood in the case of daughters, be paid to their mother the sd C. if living for their maintenance and education, but without any liability to account for the application thof, and in case of her death the same income or any pt thof shall be applied at the discretion of my trees for that ppose, either directly or by paymt thof to the guardian or guardians of such respive children without liability to see to the application thof, and any surplus income shall be invested and accumulated as an addition to the capital of the trust fund; *Advancement clause*, p. 745; AND IN CASE there shall be no child of my sd sister C. who shall attain a vested interest under the trusts afsd, the sd last mentd legacy and the trust premes representing the same or so much thof as shall not have been applied or disposed of under the trusts afsd shall sink into the residue of the sd trust premes; AND I APPOINT, devise, and bequeath all the residue of the sd trust premes comprd in or subjt to the trusts of my sd marre settlemt (including in such residue any of the legacies hinbefore bequeathed which may wholly or partially fail by lapse or otherwise), and all and singular other the este and effects both real and personal of or to which I shall at my decease be seised, possessed, or entled as my separate este, or over or in relation to which I shall have any general power of appointmt or disposition exerciseable by will unto and equally between such of my brothers as shall be living at my decease or shall have previously died leaving issue then living if more than one in equal shares and so that the shares so expd to be given to any such deceased brother shall vest in his hrs, devisees, exs or ads as pt of his real or personal este as the case may be; AND I EXPRESSLY declare that in the event of my surviving my sd husband all the dispositions hinbefore contd of the trust funds and ppty comprd in or subjt to the trusts of my sd marre settlemt

PREC.
XXIV.

Direction to pay income of shares of minors to mother for maintenance.

Gift over in case no child shall attain a vested interest.

Residuary appointment, devise, and bequest.

Equally to brothers.

Declaration as to operation of will in event of death of husband (e).

(e) If the settlement and the marriage were both before 1883, this clause would not be effectual; see p. 849, note.

PRMO.
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—

and which are hinbefore expd as intd to operate and be made in exercise of the power of appointmt thby given to me in the event of my dying in the lifetime of my sd husband as afsd shall operate and take effect as dispositions of or in respect of the beneficial este and interest to which in the event of my surviving him I shall become entled as afsd in such trust funds and ppty; AND I APPOINT — exs of this my will.

IN WITNESS, &c.

XXV.

PRMO. XXV.
—

WILL devising FREEHOLDS, COPYHOLDS, LEASEHOLDS, and HEIRLOOMS to the Testator's Issue in STRICT SETTLEMENT and BEQUEATHING the RESIDUARY PERSONALTY on the trusts declared of the PROCEEDS of a SALE of the real estate. A FULL form.

Devise of
freeholds.

Commencement, p. 655; *Specific devises*, p. 690: I DEVISE all my freehd manors, lordships, reputed manors or lordships, messuages, farms, lands, tithes, rents, advowsons, tenemts and hereds, situate, arising, and being in the several parishes, towns, villages, hamlets, and territories of, &c., or elsewhere, in the several counties of, &c., with their, and every of their rights, royalties, members, and appurts, and all other estes and hereds of freehd tenure, not otherwise disposed of by this my will, or any codicil hto, of or to which I may at my decease be seised, or entled, or over which I may have any absolute power of disposition exerciseable by will [*or, for brevity*, all my freehd estes and hereds whatsoever and wheresoever, not otherwise disposed of], [UNTO B., of, &c., and C., of, &c., and their hrs, to the uses, upon the trusts, and with and subj to the powers

and provons hinafter deeld and contd concerning the same, that is to say], *TO THE USE, &c., Limitation to trustees for term of 1000 years*, p. 762, form iv.; *Limitation of rent-charge to wife*, "in bar of dower and freebench," p. 768 (f); *Limitation of term of 200 years to trustees*, p. 762; *Limitations in strict settlement to testator's sons and their issue male*, p. 766, form xviii.; [*Limitations to testator's daughters, and their issue male*, p. 767, form xix.]; *Limitations in remainder to the issue general of testator's sons*, p. 767, form xx.; *Limitations in remainder to daughters and their issue*, p. 769, form xxi.; [*If the limitation to the daughters and their issue male, form xix., is inserted, as above, substitute for the last limitation, form xxii., p. 770*]: *Utterior limitations (if any), which can readily be framed from the forms at pp. 761 to 770*; *Ultimate remainder "To THE USE of my right hrs;"* [PROVD ALWAYS and I declare, &c., *Name and arms clause*, p. 564, *mutatis mutandis (g)*]; *Trusts of term of 1000 years to pay debts and legacies*, "in case of deficiency of," *personal estate*, p. 773; AND I DECLARE, &c., *Trusts of term of 200 years for raising portions for testator's younger children*, p. 771: *Power to jointure*, p. 774, and for female tenants for life to limit rent-charges to husbands, p. 774; *Power to charge portions*, p. 774; PROVD ALWAYS and I declare, &c., *Proviso that a charge of a rent-charge or portions shall not take effect unless the person charging the same or his or her issue becomes entitled in possession*, p. 582, *mutatis mutandis*; PROVD ALSO and I declare that, &c., *Proviso limiting total amount chargeable for rent-charges and portions*, p. 583, *mutatis mutandis*; [*Shifting clause carrying over estate on succession to another estate*, p. 566, *mutatis mutandis*]; *Power to manage during minorities*, p. 774, or, *the addition to statutory power*, p. 775 (a); *Provision as to notices under*

PRER.
xxv.
—

(f) As to the omission of the powers of distress and entry, and term for securing the jointure, see p. 557, note.

(g) If the name and arms clause is inserted, the variations given in the notes to the forms for that case will be introduced.

(a) The express powers of leasing, sale, &c., are dispensed with in reliance

PREC. XXV. *Settled Land Act, 1882, p. 790; [Add any of the following clauses which may be appropriate and required with reference to the Settled Land Act; Provision as to extension of powers of Act, p. 779; Power to grant leases for long terms and reversionary leases, p. 779; Power to make grants in fee for building purposes, p. 597, mutatis mutandis; Extended power to lay out property for building, p. 599, mutatis mutandis; Provision as to renewable leases, p. 617; and as to fines on renewals, p. 618; as to mining rents under the Act, p. 779; Power to accept leases of easements, p. 601, mutatis mutandis; Provisions as to sale, &c., of mansion house, &c., p. 780; Power to sell for fee-farm rents, p. 780; Power to sell next presentation to a benefice, p. 619; Provision as to sale of land subject to a charge under the Lands Improvement Acts, p. 780; Extended power to raise money on mortgage, p. 609, see also p. 703, mutatis mutandis; Power to exchange for land in Ireland, p. 780; Power to sell or grant sites for churches, schools, &c., p. 780; Extension of powers of investment under Act, p. 781; Extension of provisions of Act as to improvements, p. 781; Power to tenant for life to charge inheritance with improvements, p. 622 (b)]; Devise of copyholds, and bequest of leaseholds, on trusts corresponding with uses of freeholds, p. 782; [For a mining estate, bequest of mining plant, &c., on trusts, p. 625, mutatis mutandis];* I

Heirlooms. BEQUEATH my service of plate, marked with the — crest, or, “my collection of oil paintings,” or, “all the plate, furniture, linen, china, glass, and articles of household use or ornamt, prints, pictures, busts, statues, bronzes, marbles, vases, antiquities, books, and manuscripts, which shall be in, about, or belonging to my mansion house of —, [or, principal place of residence] [or the gardens or pleasure grounds thof], at the time of my decease (except such arti-

on the Settled Land Act, see p. 634, note (a); for the forms of such powers if it is desired to insert them, see pp. 777—779, and the references in the notes thereto.

(b) See also the power, p. 781, form LII., to the trustees to lend money to the tenant for life for cultivating a farm.

cles as from their trifling value, or unimportant or perish- PREC. XXV.
 able nature, my trees shall consider to be unsuitable for
 heirlooms),” or as the case may be (c), UNTO THE sd, trustees,
 their exs, ads, and assigns, upon trust, &c., *continue trust of*
chattels as heirlooms by reference to the limitations of the
devised estates, p. 626, *mutatis mutandis*; *Power to trustees*
to give heirlooms to tenant for life, p. 782, note; *Other specific*
bequests, p. 656; *Immediate legacy to wife*, p. 675; *General*
legacies, p. 674; *Bequests of annuities*, p. 684; *General*
bequest of personal estate in trust for conversion and pay-
ment of debts, &c., pp. 697, 699, 703, “and shall stand pos- Bequest of
 sessed of the residue of such monies upon the trusts and with residuary
 and subjt to the powers and provons which would be appli- personal
 cable thto if the same had arisen from a sale of the freehd estate.
 hereds hby devised in striet settlemt (d): *Trusts of income*
of personalty until conversion, p. 704; *Power to trustees to*
determine questions, 760; *Clauses appointing trustees under*
the Settled Land Act, and as to a sole trustee, p. 791; *Clause*
supplemental to statutory provisions as to indemnity of trus-
tees, p. 796 (e); [*Declaration as to devolution of trustees’*
powers, p. 796]; *Appointment of executors*, p. 797; *Appoint-*
ment of guardians, p. 798.

IN WITNESS, &c.

(c) Care should be taken not to include in a gift of heirlooms articles of an unimportant nature.

(d) As to the sufficiency of this reference to the trusts of sale monies having regard to the Settled Land Act, see p. 544, note.

(e) As to the appointment of new trustees, see p. 794, note (f).

XXVI.

PREC. XXVI.

**WILL giving FREEHOLDS, COPYHOLDS, LEASEHOLDS,
and HEIRLOOMS to Testator's issue in STRICT
SETTLEMENT in the MALE line. A SHORT form.**

Limitation
of term to
trustees.

Testator's
sons for
life.

Grandsons
in tail
male.

Proviso
cutting
down
estates of
tenants in
tail born in
testator's
lifetime.

Trusts of
term.

To raise
money to
pay debts,
&c.

Commencement, p. 655. I DEVISE all my freehd hereds to the use of, *trustees*, their exs, ads, and assigns for the term of 1000 years, to commence from my death, WITH REMR to the use of my sons severally and successively according to seniority for life, WITH AN immediate remr after the death of each of my sons TO THE USE of his sons severally and successively according to seniority in tail male WITH REMR to the use of my own right hrs; AND I DECLARE that the este of every tenant for life hereunder shall be without impeachment of waste: PROVD ALWAYS that if any grandson of mine hby made tenant in tail male by pchase shall be born in my lifetime his este in tail male shall not take effect, and in lieu thof I devise the sd hereds to the use of such grandson for his life, with remr to his sons severally and successively according to seniority in tail male; I DECLARE that the sd, *trustees*, and the [survors and] survor of them, and the exs or ads of such survor or other the trees or tree for the time being of this my will, hinafter called my trees, shall stand possessed of the sd term of 1000 years upon trust by and out of the rents and profits of the sd premes, or by the sale of timber or minerals, or by mtgee of the sd premes or any pt thof for all or any pt of the sd term, to raise the annual and gross sums following, and to pay and apply the same in mnner hinafter mentd, that is to say, FIRST, in case of deficiency of my personal este such sum as may be sufficient for discharging my funeral and testamentary expenses, debts, and legacies, but so that no mtgee or pchaser shall be bound to enquire whether such deficiency exists, and that the declon in writing of my trees that no further sum can be required to be raised under this

present trust shall be conclusive in favour of the rever- PRES. XXVI.
sioners; **SECONDLY**, an annuity of £—— commencing from Jointure
my death, to be paid to my wife K. if surviving during her for wife.
life on the usual quarter days [and so that she shall not
have power during any future coverture to dispose of
or charge the same by way of anticipation]: **THIRDLY**, Portions for
the sum of £—— for each child of mine who being testator's
a son attains the age of twenty-one years or being a younger
daughter attains that age or marries, except any son children.
or sons who before attaining the age of twenty-one years
shall become entld to the first este of freehd under this my
will; **FOURTHLY**, such annual sum not exceeding the sum Jointures
of £—— as any pson hby made tenant for life who or whose for widows
issue shall become entld to the first este of freehd in possion of tenants
under this my will shall by deed revocable or irrevocable or for life.
by will appoint to be paid to his widow for her life or any
less period, on such days and in such mner as he shall ap-
point; **FIFTHLY**, such sum not exceeding the sum of £——, Portions
as any pson hby made tenant for life who or whose issue for younger
shall become entld to the first este of freehd in possion children
under this my will shall by deed revocable or irrevocable or of tenants
by will appoint to be raised after his death or in his lifetime for life.
with his consent in writing, and to be held in trust for all or
any to the exclusion of the others or other of his children
or remoter issue other than any son or sons who before at-
taining the age of twenty-one years shall become entld
whether in possion or remr to the first este in tail male
under this my will, if more than one in such shares and in
such mner in all respects as the pson making such appointmt
as last afsd shall by the same or any other deed revocable or
irrevocable or by will or codicil appoint, and in default of
and subjt to any such appointmt in trust for all or any his
children or child other than as afsd who being a son or sons
attain the age of twenty-one years, or being a daughter or
daughters attain that age or marry, if more than one in
equal shares, and subjt to the trusts afsd the sd sum of
£——, or such smaller sum as shall be appointed or so

PREC. XXVI.

Maintenance of younger children of testator and tenants for life.

Advancement of younger children of testator.

Advancement of younger children of tenants for life.

much thof as shall not become vested under the sd trusts shall sink into the este and not be raised; SIXTHLY, such annual sum for the maintenance, education, or benefit of each child, grandchild, or great-grandchild of mine, who, if of full age, would be immediately entled to a portion, as my trees shall think fit, such annual sum not to exceed interest at the rate of 4 per cent. per annum on such portion, and to be so applied by my trees or to be paid by them to the guardians or guardian of such child, grandchild, or great-grandchild, for such ppose without seeing to the application thof; SEVENTHLY, such sum not exceeding a moiety of the expectant or presumptive portion of any child of mine as my trees shall think fit, to be applied for the advancement or benefit of such child in such mner as my trees shall think fit, and to be treated as pt of the portion of such child, in case he or she shall become entled thto; AND EIGHTHLY, such sum not exceeding a moiety of the expectant presumptive or vested portion to which any grandchild or great-grandchild of mine would, if of full age and if his or her father or grandfather to whom a life este is hinbefore given were dead, be immediately entled, as such father or grandfather shall during his lifetime in writing direct or as my trees shall after his death think fit, to be raised after the death of such father or grandfather or in his lifetime if he shall so direct in writing, and to be applied for the advancement or benefit of such grandchild or great-grandchild of mine in such mner as his or her father or grandfather shall during his lifetime or my trees shall after his death think fit, but so that if any such advance shall be made an equal pt of the sd sum of £—— or of such smaller sum as shall be charged for the portions of the child, children, or remoter issue of such father or grandfather shall sink into the este and shall not be raised; AND I DECLARE, &c., *continue proviso as to surplus rents of term*, p. 578, *clause in brackets at end of form XXVI., mutatis mutandis*; *Proviso limiting total amount chargeable for annuities and portions*, p. 588, *mutatis mutandis*, and substituting, “annuities,” for, “rent-charges;” *Minority*

clause supplemental to statute, p. 775 ; *Provision as to notices under Settled Land Act, 1882*, p. 790 ; [Add any of the other *clauses having reference to the Act which may be required, as in last Precedent*] ; I DEVISE AND BEQUEATH all my copyhd and customary hereds, and all my leasehd hereds, whether held for lives or for terms of years, unto and to the use of the sd A. and B., their hrs, exs, ads, and assigns, resply [(f) UPON TRUST out of the rents and profits thof, or by raising money on mtge thof, to pay the rents and fines and perform the covenants subjt to which the same may resply be holden, and to renew at the usual periods the leases or grants of such of the sd hereds as may be held under leases or grants for lives, or for years usually renewable, and subjt as afsd] UPON SUCH TRUSTS and subjt to such powers and provons as will most nearly correspond with the uses, trusts, powers, and provons herein decl'd and contd concerning my freehold hereds, but not so as to increase or multiply charges ; I BEQUEATH unto the sd, *trustees*, their exs and ads, *Heirlooms, see last Precedent*, UPON TRUST to allow the same to devolve as heirlooms, togr with the sd mansion house at —, as far as the law will permit ; BUT I DIRECT that the sd heirlooms, and such of the leasehd hereds hitherto bequeathed as are held for years, shall not vest absolutely in any pson hby made tenant in tail male by pchase who shall die under the age of twenty-one years, but shall on his death under that age devolve as if the same had been freehds of inheritance hby devised in strict settlemt ; *Other specific legacies*, p. 656 ; *General legacies*, p. 674 ; *Gift of residuary personalty to trustees*, p. 697, form v. ; *Upon trust for conversion*, p. 699 ; *Payment of debts, &c.*, p. 703 ; AND shall apply the residue of the same monies as if the same had arisen from a sale of the freehd hereds hitherto devised in strict settlemt ; *Trust of income of personalty until conversion*, p. 704 ; *Clauses appointing trustees under Settled Land Act and as to a sole trustee*, p. 791 ; *Clause supple-*

PREC. XXVI.
—
Gift of copyholds and leaseholds.

Heirlooms.

Heirlooms and leaseholds not to vest in tenant in tail by purchase under twenty-one.

(f) The part in brackets may usually be omitted.

PREC. XXVI, *mental to statutory provisions as to indemnity of trustees*,
 p. 796; *Appointment of executors*, p. 797, and *guardians*,
 p. 798.

IN WITNESS, &c.

XXVII.

PREC.
 XXVII.

WILL *devising* REAL ESTATE in STRICT SETTLEMENT
for securing RENT CHARGE to Testator's WIFE,
in augmentation of her jointure, and subject
thereto as to PART of estates to a SON, and his
WIFE and ISSUE, and as to the REMAINDER to a
DAUGHTER, and her HUSBAND and ISSUE, with
CROSS LIMITATIONS on failure of the primary
limitations. ULTERIOR LIMITATIONS OF PART of
estates by REFERENCE to the limitations of the other
part. LIMITATION of a TERM in PART of the
estates in trust to RAISE MONEY to PAY MORTGAGE
and other DEBTS in aid of personalty, and a SUM to
be at the Testator's WIFE's DISPOSAL by WILL.
 DEVISE of land to GO WITH ESTATES *devised by a*
 FORMER TESTATOR.

Devise of
 lands
 to go with
 settled
 estates.

Commencement, p. 655; I DEVISE all the messuages,
 farms, lands, and hereds, situate, &c., which I pchased of
 —, with the appurts thof, to such and the same pson and
 psons, for such and the same este and estes, and subj't to
 such and the same powers and provons, as the hereds known
 as the — estate, situate, &c., were devised by the will of
 —, to the intent that the sd lands and hereds so pchased
 by me as afsd, may from and after my decease devolve, and
 be held and enjoyed with the sd — este, but not so as to
 increase or multiply charges or powers of charging (g);

General devise of all other freehold estates, as in Precedent XXV., UNTO B., of, &c., and C., of, &c., and their hrs, To THE SEVERAL USES, upon the several trusts, and with and subjt to the several powers and provons hinafter decl'd and contd concerning the same resp'y (that is to say), As TO and concerning my lands, messuages, and hereds situate in the parishes of — or elsewhere in the county of Kent, to B. and C., for a term of 500 years, on trusts after declared, p. 762, form IV., AND AS TO and concerning my sd lands, messuages, and hereds, situate in the county of Kent, from and after the determination of the sd term of 500 years, and in the meantime subjt thto, and to the trusts thof, AND AS TO and concerning all the residue of my sd freehd estes and hereds hinbefore devised to the sd B. and C. from and after my decease, To THE USE, &c., *Limitation of rent-charge to testator's wife during widowhood*, "in augmentation of the jointure provd for her by the settlemt made on our marre," p. 763, form IX.; AND AS TO and concerning my estes and hereds situate in the county of Sussex, subjt to and charged with the sd rent-charge, and the powers and remedies subsisting for securing the same, To THE USE, &c., *testator's son D. for life*, p. 762, form V., *remainder to his wife E., "if surviving," for life*, p. 762, form VI., *remainder to his first and other sons in tail general*, p. 764, form X.; *remainder to his daughters, as tenants in common in tail general*, p. 765, form XIII.; *remainder to testator's daughter F. for life without anticipation*, p. 762, form VI.; *remainder to her husband G., "if surviving," for life*, p. 762, form V.; *remainder to F.'s first and other sons in tail general*, p. 764; *remainder to F.'s daughters, as tenants in common in tail general*, p. 765; *Ultior remainders to collaterals*: AND AS TO and concerning my sd estes and hereds in the county of Kent, and all the remr of the sd estes and hereds hinbefore devised to the sd B. and C.,

PREG.
XXVII.

General
devise of
freeholds.

As to free-
holds in
Kent to
trustees for
500 years.

Limitation
of jointure
to testator's
widow (a).

Limitations
of Sussex
estates.

Limitations
of Kent
estates.

(a) As to the omission of the powers of distress and entry and term for securing the jointure, see p. 557, note.

PREG.
XXVII.

Trusts of
term.

Declaration
as to inci-
dence of
rent-charge
as between
the several
estates.

other than my sd estes and hereds in the county of Sussex, subjt as to all such estes to the sd rent-charge, and the powers and remedies for securing the same, and subjt as to my Kent estes to the sd term of — years, and the trusts thof, To THE USE, &c., to daughter F. and her husband successively for life, and her issue in tail, as above, remainder to son D. and his wife successively for life, and his issue in tail, as above, WITH REMR to such and the same uses, and upon such and the same trusts as are hinbefore decl'd and exp'd of and concerning my sd estes and hereds in the county of Sussex, to take effect after the several deceases of my sd son and daughter, and their respive wife and husband, and the failure of issue of their respive bodies; *Trusts of term to raise money to pay debts*, "including any mtge debts charged on any of the sd estes hinbefore devised in strict settlem't in exoneration of such estes therefrom," and *legacies, in aid of personal estate*, p. 773, adding before the final clause, "AND UPON FURTHER TRUST, that the sd trees or tree shall, as soon as conveniently may be after the decease of my sd wife, by all or any of the means afsd raise such sum or sums of money not exceeding in the whole the sum of £—, with interest for the same, at the rate of — per cent. per annum from her decease, as my sd wife shall by her will, or any codicil thto, direct or appoint, and shall pay and apply such sum or suins and interest to such pson or psons, and for such pposes as she my sd wife shall by her will, or any codicil thto, appoint or bequeath the same;" PROVID ALWAYS, and I hby declare, that as between the psons who may become entled to my estes in the county of Kent and the psons entled to the other estes charged with the sd rent-charge of £— hinbefore limited to my sd wife (and so that this declon shall not affect the rights or remedies of my sd wife or her assigns for the recovery of the sd rent-charge), my Kent estes shall be liable for the paymt of one equal third pt only of the sd rent-charge, and the costs and expenses of raising the same, and that the residue of my estes hinbefore charged thwith shall be liable for the paymt

of the residue of the sd rent-charge, costs, and expenses ; **PROVD ALWAYS** and I declare that if the sd D. shall survive the sd E. it shall be lawful for him, the sd D., &c., *Power to appoint a jointure to an after-taken wife*, p. 578, *form xxxi.*, saying, "to be charged upon all or any of the hereds of which the sd D. shall be or become tenant for life under this my will, but subj't to the uses and estes preceding the life este of the sd D.," *Similar power to F. to appoint a rent-charge to an after-taken husband ; Power to tenants for life other than D. and F. to charge jointures and rent-charges for husbands*, p. 774, *mutatis mutandis*, saying, "tenant for life of the sd premes hitherto devised to the sd B. and C. or any pt thereof," "to be charged upon the premes of which the p'son exercising this present power shall be or become tenant for life ;" *Power to tenants for life, including D. and F., to charge portions*, p. 774, *with similar variations ; add provisoes at p. 582, forms xxxvi. and xxxvii., confining the latter to the Sussex estates and adding a similar proviso as to the remainder of the estates ; Power to trustees to manage during minorities*, p. 774, saying, "possession of the whole or any pt of the sd hereds and premes," "rents and profits of the whole or such pt as a part of the sd premes as the case may be," "as if the same had arisen from a sale of the whole or such pt as a part of the sd premes as the case may be under the power, &c.," or *the addition to the statutory power*, p. 775 ; *Provision as to notices under Settled Land Act*, p. 790 ; [*Clauses having reference to Act as in Precedent XXV.*, p. 856 ;] *Specific and general legacies ; Residuary bequest of personalty including chattels real subject to payment of debts, &c., including mortgage debts, to son D. absolutely*, p. 696 ; *Clauses appointing trustees under Settled Land Act, and as to a sole trustee*, p. 791 ; *and other usual clauses as in Precedent XXV.*

IN WITNESS, &c.

XXVIII.

PREC.
XXVIII.
—

SHORT WILL EMBODYING the INSTRUCTIONS *for the Will, WHERE the Testator is IN EXTREMIS, and there is no time for the preparation of a formal Will (b).*

I, —, of —, declare this to be my last and only will; I GIVE all my real and personal este to, *trustees*, their hrs, exs, and ads, upon trust to carry out the following instructions; AND I give to them or other the trees or tree of this my will the fullest and most absolute authority and discretion as to the mode of doing so, including power to execute and do all such settlemts, assurances, declarations of trust, and other instrumts and acts as they or he may think expedient for that ppose, and also power to modify or depart from the sd instructions to any extent that may be deemed necessary or desirable in order to carry out my general intentions and wishes as therein expd or to make the dispositions conformable to law, and I appoint the sd — exs. *Copy of instructions.*

As WITNESS my hand this — day of —.

XXIX.

PREC.
XXIX.
—

CODICIL SUBSTITUTING an EXECUTOR and TRUSTEE *for one Appointed by the Will and ALTERING LEGACIES, and incorporating provisions of the CONVEYANCING ACT, 1881, in lieu of LORD CRANWORTH'S ACT.*

Substitution of executor and trustee.

Commencement, p. 655, form IV.; I HBY revoke the appointment of K. as one of the exs and trees of my will,

(b) It is hardly necessary to say that this device should not be had recourse to except in case of urgent necessity.

[(c) and all the devises and bequests in trust thby made by me to the sd K. jointly with L.]; [AND I revoke the legacy of £—— bequeathed by my sd will to the sd K. as an exor and tree thof]; AND I HBY appoint M., of, &c., to be an exor and tree of my sd will in the place of the sd K.; [(c) AND I DEVISE and bequeath unto and to the use of the sd L. and M., their hrs, exs, ads, and assigns resply all the real and psonal este by my sd will devised and bequeathed to the sd K. and L., upon the trusts and with and subjt to the powers and provons or for the pposes and in the mner by and in my sd will, [and the former codicils thto,] decl'd and exp'd concerning the same resply]; AND I DECLARE that my sd will [and former codicils] and all the devises, bequests, powers, and provons therein contd, shall be construed and take effect in all respects as if the name of the sd M. had been originally inserted therein throughout in lieu of the name of the sd K. as an exor and tree thof: [but I hby confirm all the gifts made by my sd will [and prior codicils] to the sd K. beneficially, [except the sd legacy of £—— thby given to him as exor and tree,] and I bequeath the sum of £—— to the sd M. for his trouble]; I HBY bequeath a legacy of £—— to N. in addition to the legacy of £—— given to him by my sd will, and I revoke the legacy of £—— thby given to P.; AND I DECLARE that in lieu of the provons of the Act, 23 & 24 Viet. c. 145, which are referred to or incorporated in or applicable to my sd will the provons of the Conveyancing and Law of Property Act, 1881, which correspond with or are substituted for such provons shall be deemed to apply to my sd will [and the codicils thto]; AND IN ALL other respects I confirm my sd will [as altered by the sd former codicils thto].

Alteration
of legacies.

Incorporation of
Conv. Act,
1881 (d).

IN WITNESS, &c.

Attestation, p. 799, form III., or IV.

(c) The part in these two brackets may be omitted where brevity is desired.

(d) This clause has reference especially to the provisions relative to trustees, &c., in Part VII. of the Act. In the absence of any such declaration it might be a question which Act applies where the will was before 1882.

XXX.

PARC. XXX.

**CODICIL appointing an ADDITIONAL TRUSTEE and
EXECUTOR, and INCREASING ANNUITY and trust
LEGACIES.**

Appoint-
ment of
executor
and
trustee.

Commencement, p. 655, form IV. ; I HBY APPOINT M., of &c., to be an exor and tree of my will, to act jointly with K. and L., who are thby appointed exs and trees, [(e) and I devise and bequeath unto and to the use of the sd K., L. and M., their hrs, exs, ads, and assigns respby, all the real and psonal este by my sd will devised and bequeathed to the sd K. and L., upon the trusts and with and subjt to the powers and provons or for the pposes and in the mner by and in my sd will, [and the former codicils thto,] decl'd and exp'd concerning the same respby, and] I DECLARE that my sd will and former codicils shall be construed and take effect in all respects as if the names of the sd K., L., and M. had been originally inserted therein throughout in lieu of the names of the sd K. and L. as exs and trees thof, [(f) and I declare that all estes, trusts, and powers by my sd will [and the former codicils thto] given to, &c., *continue declaration as to devolution of trustees' powers*, p. 796]: AND I hby bequeath a legacy of £—— to the sd M. for his trouble ; I BEQUEATH to my wife A. an annuity of £—— during her life, in addition to the annuity of £—— bequeathed to her by my sd will, and to be provd for out of my general psonal este, so as to increase such annuity to £—— per annum, and I direct that such increased annuity shall be paid at the like times and in like mner as the sd annuity of £—— bequeathed by my sd will ; AND I DECLARE that the legacy of £—— bequeathed by my sd will in trust for each of my daughters and her

Bequest of
increased
annuity

and trust
legacies.

(e) See note to last precedent.

(f) The clause in this bracket will be omitted if there were originally three or more trustees, so that the trusts and powers devolved on "the survivors or survivor," &c. ; and in any case it would be superfluous, see p. 493, note (d).

issue, or in trust for the issue of any daughter dying in my lifetime shall be increased to £——, and that such respite increased legacies shall be held upon and subj't to all the trusts and provos contd in my sd will which are applicable to the sd respite legacies of £—— each thby bequeathed in trust as afsd; AND IN ALL other respects I confirm my sd will [as altered by the former codicils thto].

PREC. XXX.

IN WITNESS, &c.

XXXI.

CODICIL SUBSTITUTING the CHILDREN of a SON who has DIED for their Parent (g). PREC. XXXI.

Commencement, p. 655, form iv. ; WHAS my son K. died on the —— day of ——, leaving —— children : Now I HBY declare that such of the children of my sd son K. as shall survive me and being male attain the age of twenty-one years, or being female attain that age or marry, shall take by substitution as tenants in common in equal shares, if more than one, the share in my residuary este which the sd K. would have taken had he survived me, and in all other respects I confirm my sd will [as altered by the former codicils thto].

IN WITNESS, &c.

XXXII.

CODICIL directing that SUM ADVANCED to Daughter on her marriage and ADVANCES made to a Son shall be BROUGHT into ACCOUNT, and Settling the DAUGHTER'S SHARE of Residue. PREC. XXXII.

Commencement, p. 655, form iv. ; WHAS, on the marre of

(g) This codicil is adapted to the case where the gift to the son would fail by his death in the testator's lifetime, owing to his being comprised in a class, see p. 718, note (a).

PRBG.
XXXII

my daughter K., I transferred stocks and secs of the aggregate value of £—— as her marre portion to the trees of her settlemt; Now I HBY declare that such stocks and secs shall be taken at the afsd value of £—— in or towards satisfson of the share in my residuary trust este bequeathed by my sd will to the sd K., and shall be brought into hotchpot and accounted for accordingly; AND I FURTHER declare that the share of the sd K. in my residuary trust este shall not be paid or transferred to her, but shall be retained by my trees and held upon the trusts and with and subjt to the powers and provons hinafter decld and contd concerning the same (that is to say), &c., see *Settlement of children's shares*, p. 726; AND WHAS, since the date of my sd will I have made advances to my son L. or for his benefit amounting altogether to £——; Now I DIRECT that such sum of £—— shall be brought into account in the way of hotchpot by my sd son in the division of my residuary este; AND IN ALL other respects I confirm my sd will [as altered by the former codicils thto].

IN WITNESS, &c.

XXXIII.

PRBG.
XXXIII.

CODICIL *devising FREEHOLDS CONTRACTED to be PURCHASED, and directing that PURCHASE MONEY shall be PAID out of GENERAL Estate (a).*

Commencement, p. 655, form IV.; WHAS I have lately contracted to pchase from —— a freehd messuage, lands, and hereds, situate, &c., at the price of £——, of which I have paid the sum of £—— by way of deposit; Now I HBY DEVISE the sd messuages, lands, and premes to ——, his hrs

(a) See also form I., p. 784, giving various powers as to pending contracts for purchase or sale.

and assigns, for his and their absolute benefit [in addition to the dispositions in his favour contd in my sd will]; AND IN the event of the pchase of the same not having been completed in my lifetime, I direct that my exs shall pay to the sd —, his hrs or assigns, out of my general psonal este, the sum of £—, being the balance remaining due of the sd pchase-money with the interest, if any, and all costs and expenses payable under the sd contract of pchase in order to enable him or them to complete the sd purchase; AND IN ALL other respects I confirm my sd will [as altered by the previous codicils thto].

IN WITNESS, &c.

PREC.
XXXIII.

XXXIV.

CODICIL by a WIDOW CONFIRMING a Will made
in her HUSBAND'S LIFETIME UNDER a POWER,
which CEASED to be operative owing to his death (b).

PREC.
XXXIV.

Commencement, p. 655, form IV.: WHAS since the date of my sd will [and the codicils thto] my husband — has died, whby the power of appointant contd in my marre settlemnt and purporting to be exercised by my sd will [and codicils] has become inoperative, and the ppty which was the subjt of such power has become beneficially vested in me absolutely; Now I HBY CONFIRM my sd will [and the prior codicils thto]; AND I DIRECT that every disposition therein contd which operated by way of appointmt under the sd power therein referred to or was expd or intd so to do shall operate and take effect as a disposition of or in respect of my beneficial este and interest in the sd ppty purporting to be thby appointed; AND I DEVISE and bequeath such ppty, and all my este and interest therein

(b) See p. 848, note.

PREC.
XXXIV.
—

accordingly, so as to give effect to the dispositions contd in my sd will [and codicils].

IN WITNESS, &c.

XXXV.

PREC.
XXXV.
—

CODICIL *Correcting* CLERICAL ERRORS in a WILL.

Commencement, p. 655, *form* IV. ; I DECLARE that my sd will shall be read and construed and take effect in all respects, 1st, as if the word " — " had been inserted after the word " — " in the — line of the — page thof ; and 2ndly, as if the words " — " had been substituted for the words " — " in the — line of the — page thof : AND IN ALL other respects I confirm my sd will [as altered by the former codicils thto].

IN WITNESS, &c.

XXXVI.

PREC.
XXXVI.
—

CODICIL *by a* MAN *on his* SECOND MARRIAGE, *giving* his WIFE *an* ANNUITY, *and* CONFIRMING a WILL *made* BEFORE *and* REVOKED *by* such MARRIAGE.

Commencement, p. 655, *form* IV. *Bequest of annuity to wife*, p. 684 : AND IN all other respects I confirm my sd will, and direct that it shall operate as if I had re-executed it on this — day of —.

IN WITNESS, &c.

XXXVII.**REVOCATION of a WILL (c).**PREC.
XXXVII.
—

I, A., of, &c., hby revoke a will made by me bearing date, &c., and all other testamentary instrumts whatsoever heretofore made by me, and declare it to be my intention to die intestate (*d*).

IN WITNESS whof I have hereunto set my hand this — day of —.

Signed by the above-named —, }
in the presence of, &c., *rest of at-* }
testation clause, p. 799, form III. }

XXXVIII.**WILL REVIVING a will and codicils previously REVOKED.**PREC.
XXXVIII.
—

I, A., of, &c., declare this to be my last will : I HBY revive and confirm a will dated, &c. [and two codicils thto dated respdy, &c.] formerly made by me, which sd will and codicils I revoked on the — day of —.

IN WITNESS, &c.

(c) Although a will may be revoked by cancellation, burning, &c., *animo revocandi* (1 Vict. c. 26, s. 20), it may sometimes be desirable to put the intention on record.

(d) It was formerly more economical to die testate than intestate, as the administration duty was half as much again as the probate duty ; but this has been altered by the Act, 44 Vict. c. 12, s. 27, and there is not now any difference in this respect.

MISCELLANEOUS PRECEDENTS.

I.

PREC. I.

CONVEYANCE *by* TRUSTEES FOR SALE *of* FREEHOLDS to BENEFICIARY *absolutely entitled to PROCEEDS of SALE who* ELECTS to take the property UNCONVERTED.

Recitals.

PARTIES, A. and B., trustees, 1; C., beneficiary, 2. Recitals of conveyance on marriage of K. with L. to trustees for sale (a), and settlement of even date declaring trusts of proceeds, and shewing that in the events C. has become absolutely entitled; AND WHAS no sale has been made of any pt of the hereds comprd in the first hinbefore recited indre, and the sd C., having elected to take the same hereds as real este, has requested the sd A. and B. to convey the same to him; *Wit-* **NOW THIS INDRE WITNETH**, that in psuance of such request, the sd A. and B., as trees, *nesseth.* *see Vol. I., p. 366,* do, and each of them doth, hby grant and release unto the sd C., his hrs and assigns, ALL AND SINGULAR the — and hereds comprd in, or expd to be conveyed or assured by, the hinbefore recited indre of the — day of —, *Omitting general words and estate clause, see Vol. I., pp. 357, 359, notes,* To HOLD the same UNTO AND TO THE USE of the sd C., his hrs and assigns, discharged from the trusts and powers decld and contd concerning the same in the sd indre of, &c., *the conveyance in trust for sale.*

IN WITNESS, &c.

(a) The deed might usually be endorsed on the conveyance in trust for sale. See the precedents of such a conveyance, and settlement of the proceeds of sale, effected by one deed, p. 512, and by two deeds, pp. 514, 516.

II.

ASSIGNMENT of LEASEHOLDS *purchased by TRUSTEES* PREC. I.
of a settlement to a BENEFICIARY who has become
entitled under the TRUSTS which are NOT DIS-
 CLOSED (b).

PARTIES, A. and B., trustees, 1; C., beneficiary, 2. Recite Recitals.
lease to A. and B. and assignment of another lease to them.
 AND WHAS the sd C. has become beneficially entled Title of
 absolutely to the sd respive premes comprd in the sd two beneficiary.
 hinbefore recited indres, as the sd A. and B. do hby admit,
 and the sd C. has requested the sd A. and B. to execute
 such assignmt thof to him as is hinafter contd; NOW THIS Wit-
 INDRE WITNETH that in conson of the premes the sd nesseth.
 A. and B., as trees, do hby assign and release unto the sd Assign-
 C., his exs, ads, and assigns, ALL AND SINGULAR the ment.
 messuages, lands, hereds, and premes comprd in the sd Parcels.
 respive hinbefore recited indres or thby demised or assigned
 resply to the sd A. and B., their exs, ads, and assigns, or
 expressed so to be, To HOLD the same respive premes UNTO Haben-
 the sd C., his exs, ads, and assigns, for the residue now dum.
 unexpired of the sd respive terms for which the same resply
 are held, subjt to the respive rents, covenants, and condons
 to which the same are resply subjt under the sd respive
 leases thof, and subjt to the subsisting agreemts with the
 tenants thof resply; AND THE sd C. doth hby covenant, &c.,
covenant for indemnity of A. and B. against rents and cove-
nants of leases, see Vol. I. p. 398.

IN WITNESS, &c.

(b) This precedent is adapted to a case in which the trust is kept off the conveyance to the trustees; see Vol. I., p. 445, note. See also the last precedent.

III.

PREC. III.

CONVEYANCE *and* ASSIGNMENT *by a person* GOING ABROAD of FREEHOLD, LEASEHOLD, and PERSONAL Property to a TRUSTEE in trust for SALE, with powers of LEASING, MORTGAGING, and MANAGEMENT until sale (c).

Recitals.

PARTIES, A., owner, 1; B. trustee, 2. Short recitals of A.'s title to property; AND WHAS the sd A., being about to go and reside abroad, is desirous of vesting the sd hereds and ppty in the sd B. upon and for the trusts and pposes and with the powers hinafter expd, and the sd B. has agrd to accept such trusts; NOW THIS INDRE WITNETH, that in psuance of the sd desire, and in conson of the premes, the sd A., as beneficial owner, to the intent that the same covenants for title to and further assurance of the premes hby assured shall be implied as if these presents were a conveyance on a sale of the sd premes for valuable con-

Wit-
nesseth.Grant and
assign-
ment.Haben-
dum.

(c) For a form of power of attorney for the like purposes, see Vol. I., p. 191. A conveyance in trust is preferable to giving a power, as the latter would be revoked by the appointor's death, and it is not desirable that an instrument of this description should become part of the title.

(d) See Vol. I., p. 366, note.

sd leasehd premes for all the residue now to come of the
 respive terms for which the same are respily holden, and
 subjt to the rents and covenants on the pt of the lessees,
 and condons reserved by and contd in the respive leases
 thof [BUT SUBJT, as to such pts of the sd hereds and premes
 as are affected thby, to the several charges and incumbrances
 the short parlars of which are contd in the ——— schedule
 hto], UPON TRUST that the sd B., his (e) exs or ads, shall
 immediately or at any time or times hereafter in his or their
 uncontrolled discretion sell, exchange, or dispose of the sd
 respive premes hby assured, or any of them, or any pt or
 pts thof, in such mner as he or they may think fit, [and as
 to any sale either by public auction or private contract, and
 either togr or in parcels, and subjt to any condons which he
 or they shall think proper, with full power to him or them
 to buy in or rescind or vary any contract for sale, and to
 resell, without being responsible for loss (f);] [AND MAY
 make every or any such sale as afsd, either subjt to all, or
 any, or any pt of the charges and incumbrances affecting
 the premes sold, or any pt or pts thof respily, or discharged
 from the same, or any pt or pts thof respily, or upon the
 terms of the pchaser or pchasers being indemnified against
 the same by means of a charge thof on other ppty, or in case
 of a rent-charge or other annual sum by means of a fund to
 be set apart or appropriated to provide for the paymt thof,
 or by any other available means, and in such mner in all
 respects as the sd tree or trees may think fit]; AND IT IS
 HBY FURTHER DECLD that it shall be lawful for the sd B., his
 exs, or ads, at any time or times hereafter, to demise, &c.,
*power to grant leases of unsold land, p. 468, form LIX.; add,
 if necessary, powers of leasing for building or mining purposes,
 and other incidental powers, pp. 598, et seq., mutatis mutan-*

PREC. III.

Subject to
mortgages.On trust
for sale.Provision
as to
incum-
brances.Power to
lease, &c.

(e) As to the omission of the word "heirs" in the declaration of trust, see p. 462, note.

(f) The part in this bracket may be omitted: see the Conv. Act, 1881, s. 35.

PREC. III. *dis (g)* ; [AND ALSO to mtge or charge all or any pt or pts of
Power to the sd hereds and premes which may for the time being
mortgage. remain unsold for the ppose of raising any sum or sums of
money which the sd tree or trees may think fit for discharg-
ing or reducing all or any of the charges and incumbrances
specified in the sd — schedule hto, or any charges or
incumbrances which may have been created under the pre-
sent power, and which shall for the time being be subsisting,
or any pt or pts thof resply, or for the ppose of consolidating
any such charges or incumbrances, or by way of security for
any such mtge debt or debts, either in addition to or in
substitution wholly or in pt for any then subsisting secy or
secs for the same, or for otherwise effectuating any of the
pposes of these presents ; And to make any such mtge as
afsd, either with or without a power of sale, and with such
other powers and provons as he or they shall think proper ;
[*Add, if desired, powers of dealing with mortgages as in*
Vol. I., p. 191 ;] AND IT IS HBY DECLD that no mtgee or
Mort- mtgees advancing money upon any mtge purporting to be
gagees' made under the power of mtging hinbefore contd shall be
indemnity bound to see or inquire as to the ppose for which the same
clause. is wanted, or otherwise as to the regularity or propriety of
such mtge or its conformity to the power in that behalf
hinbefore contd, but every mtge purporting to be made pur-
suant to such power shall be valid and effectual as regards
the safety and protection of the mtgee or mtgees notwith-
standing any want of conformity to such power or other
irregularity ; PROV'D ALWAYS and it is hby decl'd that
nothing herein contd shall be construed to give to any of
the mtgees or incumbrancers mentd in the sd — schedule
hto, or any other pson or psons having any mtge or charge
upon any of the sd premes any further or additional secy
than is now possessed by him or them under or by virtue of
his or their existing secy or secs], [*If any of the property is*

This deed
not to give
additional
security
to mort-
gagees.

(g) Or these powers might be given by a short clause referring to the Settled Land Act, 1882, similar to that at p. 472.

held in undivided shares, Power to partition, p. 471, mutatis mutandis; AND IT IS HBY FURTHER DECLD that the sd tree or trees may make, enter into, execute, and do all such contracts, conveyances, demises, [mtges], assurances, and acts as shall be deemed necessary or expedient for the ppose of effectuating any such sale, exchange, or lease, [mtge or partition], as afsd, and generally shall have the same powers of dealing with the sd premes as if he or they were absolutely entled thto; AND IT IS HBY FURTHER AGRD AND DECLD that the sd tree or trees shall stand seized and possessed of the sd respive hereds and premes in the meantime and until the same shall be sold or disposed of under the trusts and powers hinbefore decld and contd, UPON TRUST to manage or superintend the managemt, &c., *continue power to manage real estate till sale, p. 467, to the end of the first paragraph*, WITH POWER for that ppose to appoint and employ any agents, overseers, receivers, or other psons at such remuneration by way of salary, commission, or otherwise as he or they may think proper, and the same from time to time to dismiss and discharge, and any others to appoint or employ in their stead, and with power also to sell the produce of the sd estes and premes resply or any pt or pts thof resply in such mner in all respects as he or they shall think proper; AND IT IS HBY FURTHER AGRD AND DECLD that the said tree or trees shall stand possessed of the rents and profits of the sd premes, and of all monies arising from any sale or exchange, [mtge or partition], thof, or of any pt or pts thof, or from the sale of the produce thof, under the trusts or powers hinbefore contd, UPON TRUST in the first place to pay, allow, or retain out of the sd rents and profits all rents, rates, taxes, and outgoings, which shall be payable in respect of the sd premes, and the expenses of repairs and insurance against fire, and the remuneration of agents, overseers, receivers, and other psons employed in and about the same, and all expenses of or incident to the managemt of the sd premes, or the rect or recovery of the

PREC. III.

Power to
execute
assurances.Interim
trusts.

To manage.

Power to
employ
agents.Trusts of
rents,
sale and
mortgage
monies.

PREC. III.

Powers to
be exercise-
able with-
out further
consent.

rents and profits thof, and the interest on any principal sums and any annual sums for the time being charged on the sd premes or any pt thof, AND UPON TRUST out of the monies arising from any of such sale or exchange, [mtge or partition], as aforesd to pay or retain the expenses of and incident to such sale or exchange, [mtge or partition], and also if thought fit any principal or other monies charged on the said premes or any pt thof by way of mtge or otherwise: AND UPON TRUST to pay the ultimate surplus of the rents and profits of the sd premes and of the monies arising from any such sale or exchange, [mtge or partition], as aforesd, after making all such paymts, allowances, and deductions thereout as hinbefore mentd, to the sd A., his exs, ads, or assigns, as psonal este, it being the intention of the sd A. that the real este hby assured shall from and after the date of these presents be considered for the ppose of transmission as converted in equity into psonal este; PROVID ALWAYS, and it is hby expressly decl'd, that all the trusts and powers hinbefore decl'd and contd shall take effect and be executed and exerciseable at all times hereafter without any further consent or concurrence of or on the pt of the sd A., his hrs, exs, ads, or assigns, and whether the sd A. shall be or remain abroad or not (a).

IN WITNESS, &c.

[Schedules.]

IV.

PREC. IV.

DEED under the 18th Section of the CONVEYANCING ACT, 1881, making the LEASING POWERS of the Act applicable to MORTGAGES PREVIOUSLY executed, and EXTENDING the powers (b).

(a) The trustee clauses are omitted in reliance on the statutory provisions, see p. 488, note (f). If the power of appointing new trustees is to be vested in A., insert form LXXXI., p. 490.

(b) See the Act, s. 18, subs. (14) and (16), above, p. 48, note.

*PARTIES, A., mortgagor, 1; B., first mortgagee, 2; C. and D., second mortgagees, 3; Intended to be read as annexed to an indre dated, &c., and expd, &c., being a mtge by the sd A. to the sd B. of certain hereds situate, &c., and a certain other indre dated, &c., and expd, &c., being a second mtge of the same premes by the sd A. to the sd C. and D., WITNETH that it is hby agrd that the provons Wit- contd in the 18th section of the Conveyancing and Law of ^{neweth.} Property Act, 1881, shall henceforth be applicable to the Agreement. sd indres of — and — in the same mner as if such indres had been executed before the commencement of the sd Act; And further that such provons shall be extended so ^{Extension} that building leases may be granted for any term not exceed- ^{of powers.} ing 999 years, and may contain any restrictions on the erection of buildings or regulations concerning the position or value of buildings or otherwise restrictive of the user of the hereds comprd therein or of any neighbouring ppty or of any buildings for the time being thereon or in respect of making, repairing, or maintaining squares, gardens, and other open places, roads, streets, sewers, fences, and other like matters, AND so that any mining leases, &c., *other special provisions.**

IN WITNESS, &c.

V.

DEED POLL by TRUSTEES for Sale ENLARGING a ^{PREC. V.} LONG TERM of years into a FEE SIMPLE, under the CONVEYANCING ACTS, 1881 and 1882. VARIATIONS where the deed comprises PART only of the LAND comprised in the term, and where it is SUBJECT to INCUMBRANCES (c).

(c) See the Act of 1881, s. 65, as amended by that of 1882, s. 11; the provisions of the Acts being somewhat long, and too special to admit of condensa. ^{As to} enlarging

PREC. V.

Recitals.
Assign-
ment of
term to
trustees.

Desire to
enlarge
term.
Wit-
nesseth.

Declara-
tion.

TO ALL TO WHOM THESE PRESENTS SHALL COME; A., of, &c., and B., of, &c., send greeting; **WHAS** by an indre, dated, &c., and made, &c., all those, &c., *parcels in full*, being [pt of] the hereds comprd in and demised to X. by a certain indre dated, &c., and made, &c., for the term of — years from the — day of — at a peppercorn rent were assigned to the sd A. and B., their exs, ads, and assigns, for the residue then unexpired of the sd term of — years [subj to certain mtges and incumbrances affecting the same] upon trust for sale as therein mentd; **AND WHAS** the sd A. and B. are desirous of enlarging the sd term of — years [as regards the hereds assigned to them as afsd] into a fee simple; **NOW THESE PRESENTS WITNESS** that by virtue of the powers of the Conveyancing Acts, 1881, 1882 (cc), the sd A. and B. do hby declare that from and after the execution of these presents the sd term of — years granted or created by the sd indre of, &c., shall as regards all the sd hereds and premes therein comprd, *or*, “as regards such pt or pts of the hereds comprd in the sd term as were by the sd indre of, &c., assigned to the sd A. and B. as afsd,” be and the same is hby enlarged into a fee simple.

IN WITNESS, &c.

long terms
into fee
simple.

tion, are not here set out. A considerable amount of property is or was held for long terms, originating mostly in old mortgages by demise, the equity of redemption of which has become barred by foreclosure or the Statute of Limitations; and such a tenure being very inconvenient, especially as being liable to be treated in wills and otherwise as if it were freehold so as to lead to miscarriage, this beneficial enactment enabling it to be converted should be largely taken advantage of. But it must of course be ascertained with certainty that the case falls strictly within the Acts, and that their conditions are complied with, otherwise the deed would fail of effect, and might lead to great difficulty.

(cc) This is the short title given in the Act of 1882, s. 1.

VI.

DEED *by the TENANT FOR LIFE of Settled Estates* PREC. VI.
under a Will ENLARGING a long TERM into a FEE —
SIMPLE under the Conveyancing Acts, and CONVEY-
ANCE to the uses of the WILL (d).

PARTIES, A., tenant for life, 1; B. and C., trustees, 2; D., grantee to uses, 3; WHAS under the will of K., deceased, Recitals. dated, &c., and proved, &c., the sd A. is beneficially entled Title to for his life in right of a term of — years, commencing term.
from the — day of —, created by an indre dated, &c., and made, &c., to the possion or rect of the rents and profits of the hereds comprd in the sd term, but the legal este of the sd hereds and premes is vested in the sd B. and C. as trees of the sd will for the residue of the sd term; AND WHAS the sd A. is desirous of enlarging the sd term of Desire to — years into a fee simple and the sd B. and C. have agrd enlarge.
with the sd A. to settle the fee simple so to be acquired by enlargemt in mner hinafter appearing; NOW THIS Wit-
INDRE WITNETH, that in conson of the premes the sd nesseth.
A. by virtue of the powers of the Conveyancing Acts, 1881 and 1882, doth hby declare that from and after the execu- Declara-
tion of these presents the sd term of — years created by tion.
the sd indre of, &c., shall as to all the hereds and premes comprised therein be, and the same is hby enlarged into a fee simple; AND THIS INDRE ALSO WITNETH, Wit-
that in psuance of the recited agreemt in this behalf and in nesseth.
conson of the premes the sd B. and C. as trees at the re- Convey-
quest of the sd A. hby grant, and the sd A. hby grants and ance.
confirms unto the sd D. and his hrs ALL THE hereds and Parcel .
premes comprd in the sd term of — years which by the sd will of the sd K. were devised or bequeathed to or became vested in the sd B. and C. in trust as afsd, and which by virtue of the enlargemt hinbefore contd are now held in fee

(d) See note to last precedent, and the Act of 1881, s. 65, subs. (4, 5.)

PREG. VI. simple, To HOLD the same UNTO the sd D. and his hrs To
Haben- THE USES upon the trusts and with and subjt to the powers
dum. and provons applicable thto by virtue of the sd will of the
 sd K.

IN WITNESS, &c.

VII.

PREG. VII. FAMILY AGREEMENT *to give effect to intended Will*
 NOT EXECUTED.

Recitals. THIS INDRE (e), made, &c., BETWEEN A., 1 ; B., 2 ; C.,
Death of 3 ; D. and E., his wife, 4 : WHAS X., late of, &c., died on the
intestate. — day of — intestate, leaving the sd A., B., C., and
Family. E., his four children, and only next-of-kin him surviving ;
 AND WHAS the sd A. is the eldest son and heir-at-law of the
Intended sd X. ; AND WHAS shortly before his decease the sd X. gave
will. instructions to his solors for the preparation of his last will,
 and the same was drafted but never signed by the sd X. :
Agreement. AND WHAS the draft will marked Z. this day signed by all
 the parties hto is admitted by them and each of them to
 contain the testamentary dispositions of the sd X., and all
 the sd pties are desirous, notwithstanding the intestacy of
 the sd X., to deal with and dispose of all his real and per-
 sonal este, and also the trust este comprised in a settlemt
 dated, &c., which by the sd will the sd X. intd to appoint
 under a power contd in such settlemt, and which in
 default of such appointmt would have devolved on the
 sd pties hto or some of them under the trusts of the sd set-
 tlemt, in the same mner as the same respy would have been

(e) The agreement should be under seal to avoid any question as to there being a sufficient consideration to support it. If there is real estate, and the case is not within the Married Women's Property Act, 1882 (which it probably would be as to the testator's own property, but possibly not as to the settled property), the deed must be acknowledged by E., see *Nicholl v. Jones*, R. 3 Eq. 696.

dealt with and disposed of under the sd draft marked Z., PREC. VII.
 if the same had been a completed documt; NOW THIS Wit-
 INDRE WITNETH that in conson of the premes and nesseth.
 by way of family arrangemt, and in order to avoid questions
 and disputes as to the division of the real and personal este
 of the sd X., and of the trust este under the sd settlemt, it is
 liby decld and agrd and the sd pties hto hby mutually Agree-
 covenant as follows :— ment.

I. ALL the real and personal ppty of the sd X., including Division of
 the ppty over which he had under the sd settlemt a power property.
 of appointmt, shall be disposed of, divided, and dealt with in
 accordance with the terms of the sd documt marked Z., and
 signed by the sd pties hto as afsd.

II. ALL and every of the sd pties hto and their respive hrs Execution
 exs, ads, and assigns, shall execute all such deeds and of deeds.
 documts, and do all such acts as may be necessary or be
 deemed expedient to give complete effect to this agreemt,
 and the costs of the preparation and execution of such
 documts shall be deemed expenses attending the execution
 of the trusts and dispositions decld and contd in the sd
 documt marked Z.

III. NONE of the sd pties or his or her hrs, exs, ads or No pro-
 assigns shall as next-of-kin or heir-at-law or heir according ceedings to
 to the custom of any manor of the sd X., or as claiming be taken
 under the trusts contd in the sd settlemt in default of any by any
 exercise of the power of appointmt afsd, or in any other party
 character, bring any action or take any proceedings against claiming
 any other pty hto, his or her hrs, exs, ads or assigns, in under
 reference to any pt of the sd real or personal ppty of the sd intestacy.
 X., or the trust este under the sd settlemt; but this shall
 not prejudice the right of any pty to enforce performance of
 this agreemt or of any of the terms hereof.

IV. The sd A. shall be allowed to obtain without oppo- Adminis-
 sition letters of administration to the personal este and tration to
 effects of the sd X., but such este and effects shall be admin- be ob-
 istered and dealt with according to the terms of this agreemt. tained.

IN WITNESS, &c.

VIII.

PREC. VIII.

REVOCABLE GRANT *and agreement respecting the supply of WATER to a HOUSE from an adjoining estate (f).*

Recitals.

That pipes
have been
laid down.

Consent of
A. to grant
right of
taking
water.

Wit-
nesseth.

Grant.

Liberties.

PARTIES, A., 1; B., 2; Recite titles of A. to the X. estate, and of B. to Y. House adjoining that estate; AND WHAS the sd B. some time since, with the consent of the sd A., laid down pipes from the sd X. este to Y. House afsd, for the ppose of conveying water from the sd este to the sd house for domestic and garden pposes; AND WHAS the sd A. is willing to grant the right to take and convey water in mner and for the pposes afsd to the sd B., his hrs and assigns, the owner or owners for the time being of Y. House, upon condon that such privilege shall not be used to the prejudice of the owners of the X. este, and shall be revocable at pleasure, as hinafter mentioned, and shall be subjt to such other restrictions and stipulations as are hinafter expd: NOW THIS INDRE WITNETH that in conson of the premes, and for the other consons hinafter appearing, the sd A. [as beneficial owner, see Vol. I., p. 366, note] doth hby grant and demise unto the sd B., his hrs and assigns, the owner or owners from time to time of Y. House afsd, FULL AND FREE liberty and licence at all times hereafter, until such liberty and licence shall be revoked under the provon in that behalf hinafter contd, to take and convey water by means of any pipes and tanks already laid down, or to be hereafter laid down for such ppose, from the sd X. este for the use of Y. House afsd, and the gardens and grounds belonging thto, in as full and ample a mner as htofore, togr also with full liberty and licence for the pson or psons afsd, or any pson or psons authorised by him or them, with work-

(f) The object of this grant is to prevent a legal easement by user from being acquired. See 2 & 3 Wm. IV., c. 71, s. 2, Vol. I., p. 58, note.

men and others, from time to time hereafter, until such liberty and licence shall be revoked, to enter on the sd X. este, or any pt thof, and to dig, search for, and examine the sd pipes and tanks, and do all necessary cleansings and repairs thto, or renewals thof, when and as often as occasion shall be or require, giving nevertheless to the sd A., his hrs or assigns, or the owner or owners for the time being of the sd X. este, and to his or their tenants for the time being, reasble notice, previous to such entry, of the object and ppose of the same, and making to the sd A., his hrs or assigns, and to such owner or owners and tenants, full compensation for all damage which may be done to his or their land, or the timber, trees, wood, or underwood, or growing crops thereon, by reason of the exercise of any of the liberties and licences hinbefore contd ; AND YIELDING AND PAYING unto the sd A., his hrs or assigns, or the owner or owners from time to time of the sd X. este, the yearly rent or paymt of twenty shillings for or in respect of the liberties, licences, and privileges hby granted or demised during the continuance thof, the paymt of such rent or yearly sum to be made on the — day of — in every year, without any deduction ; PROVD ALWAYS that the liberties and licences hby granted or demised shall not be used to the prejudice, injury or inconvenience of the owner or owners of the sd X. este, or his or their tenants ; And that nothing herein contd shall prevent the sd A., his hrs and assigns, or the owner or owners or tenants from time to time of the sd X. este, or any pt thof, from diverting, diminishing, interfering with, or cutting off the water by which the sd tanks and pipes are or may for the time being be supplied, and so that in such event the owner or owners of Y. House afsd shall not be entled to any compensation for the damage occasioned by the diminution or stoppage of such supply of water ; PROVD ALSO and it is hby agrd and decld that the sd A., his hrs or assigns, or the owner or owners for the time being of the sd X. este, shall have full power and authority at any time hereafter by giving three calendar months' notice in writing

PREC. VIII.

Bedden-
dum

Provisoos.

Power of
revocation.

PREC. VIII. to the sd B., his hrs or assigns, the owner or owners for the time being of Y. House afsd, or leaving such notice at Y. House, to revoke and make void the liberties, licences, and powers hby granted or demised, in which case the sd pipes and tanks shall be removed and the surface soil restored by the sd last mentd pson or psons on reasble notice in that behalf being given to him or them, and in default thof such pipes and tanks shall become the ppty of the owner or owners for the time being of the sd X. este.

IN WITNESS, &c.

IX.

PREC. IX. **DEMISE** of RIGHTS for WATER SUPPLY of a LOCAL GOVERNMENT DISTRICT (g).

Wit.
neweth.

Grant.

Power to
take water
from a
spring.

PARTIES, A. and B., (hinafter generally referred to as "the lessors," which expression shall be deemed to include the owners or owner from time to time of the lands of the lessors hinafter mentd), 1; the Local Board of —, in the county of —, being the Urban Sanitary Authority of the Local Governmt district comprising the town of — afsd, (hinafter referred to as "the lessees," which expression shall be deemed to include their successors and assigns), 2. **WITNETH** that in conson of the rent and covenants hinafter reserved and contd, and on the pt of the lessees to be paid, observed, and performed, the lessors do hby grant and demise unto the lessees **FULL POWER AND AUTHORITY** to and for the lessees to take, use, and enjoy all the water issuing or coming from the spring known as the —, situate in the

(g) See the Public Health Act, 1875, 38 & 39 Vict. c. 55. s. 51. and the interpretation of "Lands" and "Waterworks," in s. 4; as to the powers of rural sanitary authorities, see the Public Health (Water) Act, 1878, 41 & 42 Vict. c. 25.

lands of the lessors in the parish of —, the site of which PARG. IX.
spring is shewn on the plan hereunto annexed and thereon
marked with the letter —, And to convey the same water
to any lands, tenements, or hereditaments within the sd Local Go-
vernment District: AND FOR THAT PURPOSE to lay down, con- To lay
down a
main.
struct, or make within — calendar months from the
execution of these presents, and on such levels, and either
upon, above, or below the surface of the lands as the lessees
shall think proper, and to maintain a main or pipe or pipes
or aqueducts, inlets, settle wells, and other similar works in,
under, or through the lands or grounds of the lessors in the
respective parishes of — and —, in the county of —, in
the line distinguished by the colour — on the sd plan
hereunto annexed or as near to such line as circumstances will per-
mit, and not in any case further from the sd line than —
feet on either side thereof, AND ALSO full power within the sd To con-
struct and
maintain a
reservoir.
period of — calendar months to make or construct, and
during the term hereby granted to maintain a reservoir for the
storage of the said water, and any engines, machinery, and
other works or appliances which may be deemed necessary
or proper in connection therewith at the point marked — on
the sd plan; AND ALSO for the purposes aforesaid, and for the To repair,
&c.
purpose of examining and repairing or relaying the sd reservoir
or any pipes, mains, aqueducts, engines, machinery, or other
works which may be laid down or constructed by the lessees
through, upon, or under the sd lands or grounds, or of lay-
ing down, constructing, or substituting any new or other
pipes, mains, aqueducts, engines, machinery, or works in
lieu of any previously laid down, constructed, or made, full
power for the lessees, their agents or workmen, either with
or without carts and horses, to enter upon the sd lands within
the limits aforesaid; AND TO take possession of, use, and occupy To take
possession
of neces-
sary land.
during the term hereby granted such portion or portions of the
sd lands as may be necessary for the purposes aforesaid, and
generally full power to perform any act or thing within or
upon the sd lands or grounds for the purposes aforesaid or any of
them which the lessees shall think proper or expedient;

PREC. IX.	PROVD ALWAYS that not more than — acres of land in the
Limit to amount of land to be taken.	whole shall be taken possion of, used, or occupied by the lessees for the pposes afsd ; PROVD ALSO that the lessees in the exercise of the powers afsd shall do as little damage as
Lessees not to damage lands.	may be to the lands of the lessors, or the timber or other trees, underwood or crops thereon, and shall make compensation for any damage doné in mner hinafter provd ; To HOLD
Habendum.	the powers, authorities, and premes hby demised unto the lessees from the — day of —, for the term of — years ;
Covenants by lessees.	<i>Reservation of rent, Vol. I., p. 623 ; AND THE LESSEES do hby covenant with the lessors, to pay rent, Vol. I., p. 626 ; rates and taxes, Vol. I., p. 627 ; AND FURTHER, that the lessees</i>
Not to do damage.	<i>in the exercise of the powers afsd, will do as little damage as may be to the sd lands, or the timber or other trees, underwood, crops, or vegetation thereon ; AND WILL make and give to the tenants of the sd lands full compensation for any loss, damage, or inconvenience which they resply shall or may incur or sustain by reason of any works or operations of the lessees under the powers afsd, such compensation, in case the pties do not agree, to be settled by arbitration, psuant to the arbitration clauses contd in the Public Health Act, 1875, or any statutory modification or re-enactmt thof for the time being in force, which shall be deemed to apply in the same mner as if the same had been herein incorporated with the necessary modifications (if any) ; AND ALSO that</i>
To compensate tenants for damage.	<i>the lessees, after making any excavation or executing any of the works hinbefore authorised, will at their own expense, as soon as conveniently may be, restore the surface of the ground to the same state as it was in before such excavation or other works, so far as such surface shall not be required for the ppses afsd ; AND ALSO will, at the option and to the satisfon of the lessors, or their agent for the time being, either carry away such portion of the soil, clay, stone, or other materials taken out in the laying down of the sd pipes, or the construction of the sd reservoir, and executing the other works afsd, as shall not have been employed for restoring the surface of the sd lands, or for the ppose of the</i>
To restore surface.	
As to soil, &c., excavated.	

sd works, or leave the same or any pt thof for the use of the lessors or their tenants; AND WILL complete the laying of the sd pipes, and the construction of the sd reservoir, and execution of the other works hinbefore mentd in all respects within the time hinbefore appointed in that behalf; AND THAT in case during the exercise of any of the afsd powers the lessees shall disturb or interfere with the drainage, whether natural or artificial, and whether surface or underground, of any lands of the lessors, or shall damage any drain-pipes or culverts in or under any such lands, the lessees will at their own expense make good all such damage, and restore such drainage, under the superintendence and to the satisfon of the lessors or their agent; AND FURTHER, that the lessees will from time to time during the term hby granted, if and whenever thereunto required by the lessors, supply with a sufficient quantity of water all houses, cottages, farm and other buildings, and troughs and drinking places for cattle now existing, or hereafter to be erected or placed upon the sd lands, or any pt thof, within a distance of — yards from the line of the sd pipes, the lessors bearing and paying the costs and expenses of laying down all branch pipes, and of executing all works necessary for connecting the sd houses, cottages and farm or other buildings, cattle-troughs, and drinking places, with the sd main line of pipes, and also paying unto the lessees a water rate or rent in respect of such water supply as last afsd, to be assessed on the same scale as the rate for the time being charged in respect of water supplied to houses and tenemts in the town of —; PROV'D ALWAYS and it is hby agrd that if the rent hby reserved shall be unpaid for the space of — days after the same shall have become payable, whether lawfully demanded or not, or in case the lessees shall at any time make default in the performance or observance of any of the covenants or stipulations hinbefore contd, and on their pt to be observed and performed, and shall not make good such default, and also make full compensation to the lessors for all damage thby sustained by them, within three

PRINC. IX.

To complete works in a certain time.

Not to interfere with drainage.

To supply water to houses on the estate.

Power to lessors to determine grant in case of nonpayment of rent, &c.

PREC. IX. calendar months after receiving from the lessors a notice in writing, requiring them, the lessees, to make good such default, and to make such compensation for damage (if any), it shall be lawful for the lessors to take up and remove any pipes which shall have been laid down under the powers aforesaid, and thereupon this grant and demise shall cease and determine; AND THE SAID A. and B. do hereby covenant with the lessees, that they, paying the rent hereby reserved, and performing and observing the covenants and stipulations hereinbefore contained, and on their part to be performed and observed, may quietly have, use, and enjoy the powers, authorities, and premises hereby demised at all times during the said term of — years, without any interruption by the said A. and B., or any person or persons rightfully claiming any estate in the said lands through or in trust for them.

Covenant
for quiet
enjoyment.

IN WITNESS, &c.

X.

PREC. X.

*DEMISE by a LANDOWNER to an URBAN AUTHORITY
of the RIGHT of MAKING a SEWER, and AGREEMENT
for DISPOSAL of SEWAGE, under the PUBLIC HEALTH
ACT, 1875 (a).*

Parties. *PARTIES, A., of, &c., who or other the person or persons for the time being entitled to the possession or receipt of the rents and*

(a) See the Act, 38 & 39 Vict. c. 55, ss. 4, 5, 6, 7, 13, 14, 16, 27, 175, 176, 305. The Act enables the local authority to acquire the easement in perpetuity or for a term, and enables limited owners to convey under the Lands Clauses Acts, but does not enlarge their leasing powers, which must, therefore, depend on the instrument under which they derive title. A contract for the disposal of the sewage must be limited to twenty-five years (s. 27), and the lease of the easement is, therefore, in this precedent confined to that term. In default of a new arrangement being entered into at the end of the term, it would be necessary for the local authority to put in force their

profits of the lands hinafter mentd is or are comprd in and designated by the expression "the landowner," where the same is hinafter used, 1. The mayor, aldermen, and burgesses, acting by the council of the town and borough of —, in the county of —, or, "the local board of —," or, "improvemt commissioners of —," who and whose successors and assigns are hinafter included in the expression "the local authority," 2: WHAS the local authority have adopted and determined to carry out a scheme for the drainage and disposal of the sewage of the town and district of — afsd, and to facilitate the carrying out of the sd scheme the pties hto have agrd to enter into the arrangeimt hinafter contd for the conveyance of the sd sewage through the lands hinafter mentd, forming pt of the settled estes of the sd A., of which he is tenant for life under the will, &c., and for the delivery of the sd sewage upon the farm and lands hinafter mentd, forming pt of the sd settled estes, and supplying the same for the use of the landowner, during the period and in mner and upon the terms hinafter expd; NOW THIS INDRE WITNETH that for effectuating the sd arrangemt, and in conson of the rents, covenants, and agreemts hinafter reserved, or made payable, and contd, and on the pt of the local authority to be paid, observed, and performed, the sd A., by virtue and in exercise of every or any power or authority enabling him in this behalf, whether under the sd will, or the Public Health Act, 1875, or otherwise howsoever, and also by virtue of the este and interest of him, the sd A., under the sd will, doth hby grant and demise unto the local authority, FULL and free Grant.

PREC. X.

Recital.

Wit.
nesseth.

compulsory powers. By s. 13, so much of the sewer as is *within* the local government district is vested in the local authority absolutely. This precedent may be altered (as regards the easement of laying down and maintaining the sewer) into a grant in fee by a limited owner in consideration of a gross sum or a rent-charge, under the Lands Clauses Acts, with the aid of Precedent LII. or LIV. Vol. I., pp. 507, 512; or the easement might be granted under the Settled Land Act, 1882, either in perpetuity, in consideration of a gross sum under s. 3, or by way of lease for a term not exceeding twenty-one years at a rent or fine under s. 6. See the notes on the Act in Vol. I., and Vol. II. Settlements.

PREC. X.
Liberty to
convey
sewage
through
lands.

To dis-
charge
sewage at
a certain
point.

To lay
down
pipes, &c.

Buildings
not to be
erected.

Power to
repair
works.

To enter.

Take lands.

power and liberty to convey the sewage and waste water of such pt of the town of — afsd, as can be drained into the sewers shown upon the plan hereunto annexed, through, over, or under the lands forming pt of the settled estes of the sd A., situate in the parishes of —, in the county of —, from the point marked X. to the point marked Y. in the sd plan, or to such other point as may be determined upon in lieu of the sd point Y. as hinafter mentd, by means of a continuous line of cast-iron pipes, the internal diameter of which shall be — inches, in the course of the line coloured — and marked Main Sewer in the sd plan, or along such other line as may be determined upon in lieu of the sd line coloured —, as hinafter mentd, so far as such line coloured —, or such substituted line, passes through the lands of the sd A.; AND TO deliver and discharge the sd sewage and waste water at the sd point marked Y. upon the farm called —, forming pt of the estes of the sd A., or upon such other pt of the lands of the sd A. as may be determined upon as hinafter mentd; AND TO lay down, construct, erect, and make in, through, upon, or under the sd lands, such pipes of the description hinbefore mentd, wells, tanks, sluices, ducts, weirs, culverts, engines, machinery, works, and conveniences as may from time to time be necessary or expedient for or in relation to or connection with the pposes afsd, or any of the other pposes hinafter expd; PROVID ALWAYS that no buildings of any description shall be erected upon any portion of the sd lands without the previous written consent of the landowner; AND ALSO full power and liberty from time to time to repair, replace, and maintain the sd pipes, wells, and tanks, and all the works in connection thwith; AND ALSO full power and authority for the local authority and their surveyors, engineers, workmen, and agents, with or without carts and horses, from time to time to enter upon the sd lands for any of the pposes afsd, And to take possion of, use, and occupy such pt or pts of the sd lands, and during such period or periods as may be requisite for any of such pposes, and generally to do

and perform such acts and things in or upon any of the lands aforesaid as may be necessary or proper for or in relation to any of the purposes aforesaid; PROVIDE ALWAYS that the several powers and liberties hereinbefore granted and demised shall be subject to the restrictions and provisions hereinafter expressed and contained; TO HOLD the powers, liberties, and premises hereinbefore expressed to be hereby granted and demised unto the local authority from the — day of — for the term of twenty-five years; YIELDING AND PAYING unto the landowner during the said term for or in respect of the powers and liberties hereby granted and demised the yearly rents following, that is to say, the yearly rent of £— as and by way of a wayleave rent to be payable on the — day of — in every year, the first payment thereof to be made on the — day of —; AND ALSO the yearly rent of £— as an occupation rent for every acre in excess of — acres, and so in proportion for any less quantity than an acre (in excess as aforesaid) of surface land which may be taken and occupied by the local authority whether permanently or temporarily for any of the purposes aforesaid, such occupation rent to be payable on the — day of — in every year during the said term in respect of all land so occupied in excess as aforesaid during the preceding year for the period during which such occupation shall have continued; PROVIDE ALWAYS and it is hereby agreed that not more than — acres of land in the whole shall be taken, used, or occupied by the local authority at any one time under or by virtue of these presents without the consent in writing of the landowner or his agent; PROVIDE ALSO and it is hereby agreed and decided that the line of the said main sewer may at any time before the said works shall have been commenced or after the commencement thereof be altered by the landowner by a notice in writing signed by him or his agent and delivered to the clerk of the local authority or left at their town hall, [office,] provided the line so substituted shall be certified by the engineer of the local authority to be free from objection and not to exceed in length the length of the said line marked

PREC. X.

Haben-
dum.Redden-
dum.Wayleave
rent.Occupation
rent.Limit to
amount of
land taken.Power to
change line
of main
sewer.

PREC. X.	X. Y. on the sd plan, or otherwise to involve any increased
Covenants by local authority.	expenditure of money on the part of the local authority or any delay in the completion of the works ; AND THE LOCAL AUTHORITY do hby covenant with the landowner that they, the local authority, will, &c., <i>to pay rents</i> , Vol. I. p. 626 ;
To do works in schedule.	<i>and rates and taxes</i> , Vol. I. p. 627 ; AND THAT the local authority will lay down such pipes and execute such works for the conveyance of the sd sewage and waste water in the line of the sd main sewer, and the reception, storage, regulation, and distribution of the sd sewage and waste water as
Pipes, &c., not to interfere with cultivation.	are specified in the schedule hto ; AND THAT all pipes and other works belonging to the main sewer shall, as far as the case will admit, be laid and fixed at such a depth below the surface of the sd lands as not to interfere with the proper cultivation of such lands ; AND FURTHER that the local authority will lay down, execute, construct, and make all the pipes and other works and things specified in the sd schedule hto, or which may be otherwise requisite for the conveyance of the sd sewage and waste water along the sd main sewer, and the reception, storage, and regulation thof or incidental thto, in a substantial and proper mner and with the best materials of their respive kinds according to the requiremts and stipulations expd in the sd schedule hto, and to the reasble satisfson of the landowner or his engineer or agent ; AND THAT the sd main sewer and all the works and things specified in the sd schedule hto, or otherwise incidental thto resply, or which shall be requisite for the conveyance of the said sewage along such sewer and the delivery thof for distribution on the sd lands, shall be completed within — years from the date of these presents ; Provd ALWAYS that no sewage shall be allowed by the local authority to pass through the sd main sewer until the engineer of the local authority and the engineer or agent of the landowner shall have made and delivered to the sd respive pties their joint certificate that the same and all works connected thwith are completed and in proper working order ; Provd ALSO that no pt of the sd sewage and waste water shall be
All works to be done in a substantial manner.	
Time forl completion of works.	
No sewage to pass till engineers' certificate obtained.	
Provisions as to delivery of sewage.	

delivered or required to be received or disposed of by the landowner at any point except the terminus of the sd main sewer or such other point or points as may from time to time be appointed by the landowner in that behalf; PROV'D FURTHER that the sd sewage and waste water shall be delivered at the sd point Y. or such point as may be substituted for the same as afsd, at a depth of — inches below the surface of the land or at such other level as may be reasbly required by the landowner; AND ALSO that in case at any time or times during the sd term, whether before or after the completion of the sd works, the landowner shall desire the sd sewage and waste water to be diverted wholly or in pt at any point or points along the line of the sd main sewer for the ppose of being delivered at such point or points of diversion or of being conveyed to any other pt or pts of the sd land, and of such desire shall give notice in writing to the clerk for the time being of the local authority by delivering or leaving the same as afsd, then and in every such case the local authority shall, within a reasble time from the rect of such notice, at their own cost and to the reasble satisfon in all respects of the agent for the time being of the landowner, make and construct such outlet or outlets, and fix such screw valve, or valves, or other apparatus or works at the point or points of diversion as shall be necessary for the ppose of diverting (wholly or in pt as the case may be) the sd sewage and waste water, and regulating the flow or passage of the same from such point or points of diversion; PROV'D THAT the number of screw valves which the local authority may be so required to fix shall not exceed in the whole —; AND THAT the sd sewage and waste water shall be delivered at the respive points of diversion hinbefore mentd at the depth of — inches below the surface of the land, or as near thto as the case will admit; AND SHALL, also, if required as afsd, within a reasble time after such notice, and to the like satisfon, lay, make, and connect such junctions and connections as shall be necessary for connecting the sd main line of pipes with any pipes, drains, or

PREC. X.

Power to
landowner
to require
delivery of
sewage at
interme-
diate
points.

PREG. X.

Works to
be kept in
repair.

As to al-
terations.

Provisions
as to entry
on lands.

appliances, by means of which the landowner shall intend to convey the sd sewage and waste water from the sd point or points of diversion, but so that such pipes, drains, and appliances as last afsd, and any other works necessary for conveying and distributing the sewage from any such openings as last afsd, shall be made by the landowner at his own expense ; AND FURTHER that the local authority will at all times during the sd term keep and maintain all the sd pipes, works, and premes hinbefore covenanted or authorised to be laid down, constructed, or made by the local authority in proper and efficient repair, working order, and condon ; [AND THAT no alteration shall at any time be made by the local authority in any of the sd pipes or works without the written consent of the landowner or his agent] ; AND THAT in case any alteration shall at any time during the sd term be required by the local authority to be made in any of the sd pipes or works, the same shall be executed and carried out by them to the reasble satisfon of the landowner or his engineer or agent ; AND THAT the local authority will (except in cases of emergency requiring immediate repair or alteration) give reasble notice in writing to the landowner and the tenants of the sd lands before making any entry thereon for the ppose of laying the sd pipes or executing or doing any repairs or alterations, or other works or things as afsd ; PROVD ALWAYS that, after the completion of the sd works, no pson shall be at liberty to enter upon the sd lands for the ppose of examining or inspecting the sd pipes or other works, or for any other ppose, on behalf of the local authority, except such inspector as shall from time to time be appointed for that ppose by the local authority, with the approval in writing of the landowner, or his principal land-agent (which approval may be at any time revoked, without assigning any reason for such revocation), and except workmen or other psons necessarily employed in carrying out repairs or alterations, and that the local authority, after making any excavation, or executing any of the works, repairs, or alterations hby authorised, will as soon as con-

veniently may be restore the surface of the ground to the same state as it was in before such excavation or other works were executed, and for that ppose fill for a depth of at least — inches the upper pt of any such excavation with the best soil which shall be removed in making the same excavation ; *To carry away the soil, &c., taken out in the execution of the works, or leave the same for the use of the landowner, as in last Precedent, p.890 ; To restore the drainage of the lands, if interfered with, p. 891 ;* AND ALSO that the landowner may cause any drains coming from any houses or tenemts on the lands afsd to empty into the sd main sewer, the necessary connections and communications with and between the same being made by and at the cost of the landowner, and subjt to the control and under the superintendence and to the satisfon of the engineer of the local authority ; AND THAT the sd sewage and waste water shall not be allowed to escape or filter on to or through any of the lands afsd, except at the places to which the same shall be conveyed for the ppose of being distributed as afsd ; *Not to do unnecessary damage to the lands or crops, and to compensate the tenants for damage, p. 890 ;* AND that the sd sewage and waste water shall be passed through proper sludge strainers before being allowed to pass through the sd main sewer ; AND THAT no storm water, and no matter which would render the sd sewage and waste water injurious to vegetation or diminish the value thof for agricultural pposes, shall, so far as the local authority may be able to prevent the same, be allowed to pass through the sd main sewer ; PROV'D ALWAYS and it is hby agrd and decl'd that it shall be lawful for the landowner at any time or times, at his own expense, to take up and relay in any direction he may think fit the whole or any pt of the sd main sewer, where the same passes over the lands afsd, and the pipes, works, and apparatus connected thwith, provd the outlet or terminus thof is not placed at a higher level than the point marked Y on the sd plan, and so that any such alteration is executed and carried out to the satisfon of the engineer for the time being of the local authority,

PREC. X.

Power to
landowner
to connect
house-
drains with
sewer.

Sewage
not to be
allowed to
escape on
to lands.

Sewage to
be strained
before
passing
into sewer.

No storm
water, &c.,
to pass into
sewer.

Power to
landowner
to divert
main
sewer.

- PREC. X.** and that the local authority shall remain liable to keep such main sewer, pipes, works, and apparatus (after the completion of such alteration) in repair and proper condon, in the same mner as if such alteration had not been made; **PROVD ALSO** and it is hby agrd and decl'd that nothing herein contd shall prejudice or affect the right of the landowner to work and get any mines, minerals, or substances lying under the sd main sewer, but so that he shall not thby cause any subsidence of the soil, or any damage or injury to the sd main sewer or the other works afsd; **AND THIS INDRE ALSO WITNETH** that, in psuance of the sd agreemt in this behalf and in conson of the premes, the local authority do hby further covenant with the landowner that, when and so soon as the necessary works for that ppose shall have been completed as afsd, unless the landowner shall in mner hinafter mentd otherwise direct, the local authority will cause all the sewage and waste water from such pt of the town of — afsd as can be drained into the sewers shewn on the sd plan to flow, as and when such drainage shall be completed, through the sd main sewer and so as to enable the landowner at his pleasure from time to time during the residue of the sd term of twenty-five years either to receive the same at the terminus or outfall of the sd main sewer or to divert or intercept the whole or any pt thof by means of any such branch or intermediate ducts or pipes as afsd, And to regulate and control the discharge and flow of the sd sewage and waste water at the sd terminus or outfall or into any such branch or intermediate ducts or pipes in such mner as he may think fit; **AND WILL** permit the landowner during the residue of the sd term of twenty-five years to dispose of and use the sd sewage and waste water either at the terminus or outfall of the main sewer or at any such intermediate point or points as afsd for his own benefit for the ppose of irrigation or for any other ppose and in any other mner without making any
- Landowner's mining rights reserved (b).
- Covenant to deliver sewage for use of landowner.
- Power to landowner to dispose of sewage.

(b) As to mines, see the Public Health Act, 1875, s. 334.

paymt or compensation for the same to the local authority : PREC. X.
 PROVD ALWAYS, and it is hby agrd that all works and things which may be requisite for the ppose of distributing the sd sewage and waste water over any pt of the sd lands, whether from the main outlet or any branch outlet or incidental thto or for otherwise enabling the landowner to utilise the same, with the exception of such works and things as are hinbefore covenanted to be executed and done by the local authority, shall be executed and done by the landowner at his own expense ; PROVD ALSO that the sd sewage and waste water shall not be disposed of or dealt with by the landowner so as to be a nuisance or annoyance to the owners or occupiers of any houses or lands in the neighbourhood or to the public, and in the event of any such nuisance or annoyance arising the local authority shall be indemnified by the landowner from all damages and expenses in respect thof ; PROVD Power to landowner to determine grant on non-payment of rent, &c. ALWAYS and it is hby agrd that if the respive rents hby reserved or any of them shall be unpaid for the space of twenty-one days next after the same shall have become payable as afsd, whether lawfully demanded or not, or in case the local authority shall at any time make default in the performance or observance of any of the covenants or stipulations hinbefore contd and on their pt to be observed and performed, and shall not make good such default and also make full compensation to the landowner and his tenants for all damage thby sustained by him or them within three calendar months after receiving from the landowner a notice in writing to be delivered or left as afsd requiring the local authority to make good such default and to make such compensation for damage (if any), then and in any such case it shall be lawful for the landowner by a further notice in writing to the local authority, to be delivered or left as afsd, to determine the grant and demise hinbefore contd which shall thereupon cease accordingly ; PROVD ALSO and it is Power to landowner to do repairs on default of local authority. hby further agrd (but without prejudice to the power lastly hinbefore contd), that in case the local authority shall at any time make default in executing any repairs or other

PREC. X. works which ought to be executed by them under the provons hinbefore contd, and shall continue such default for a period of one calendar month after receiving from the landowner or his agent a notice in writing (to be delivered or left as afsd) requiring them to execute such repairs or works, it shall be lawful for the landowner himself to execute the same, and in such case the costs and expenses so incurred by him with interest thereon at the rate of — per cent. per annum from the time of the same being incurred and all damages sustained by the landowner through such default of the local authority shall be repaid by them to him on demand; *Covenant by A. for quiet enjoyment*, p. 892, *mutatis mutandis*.

IN WITNESS, &c.

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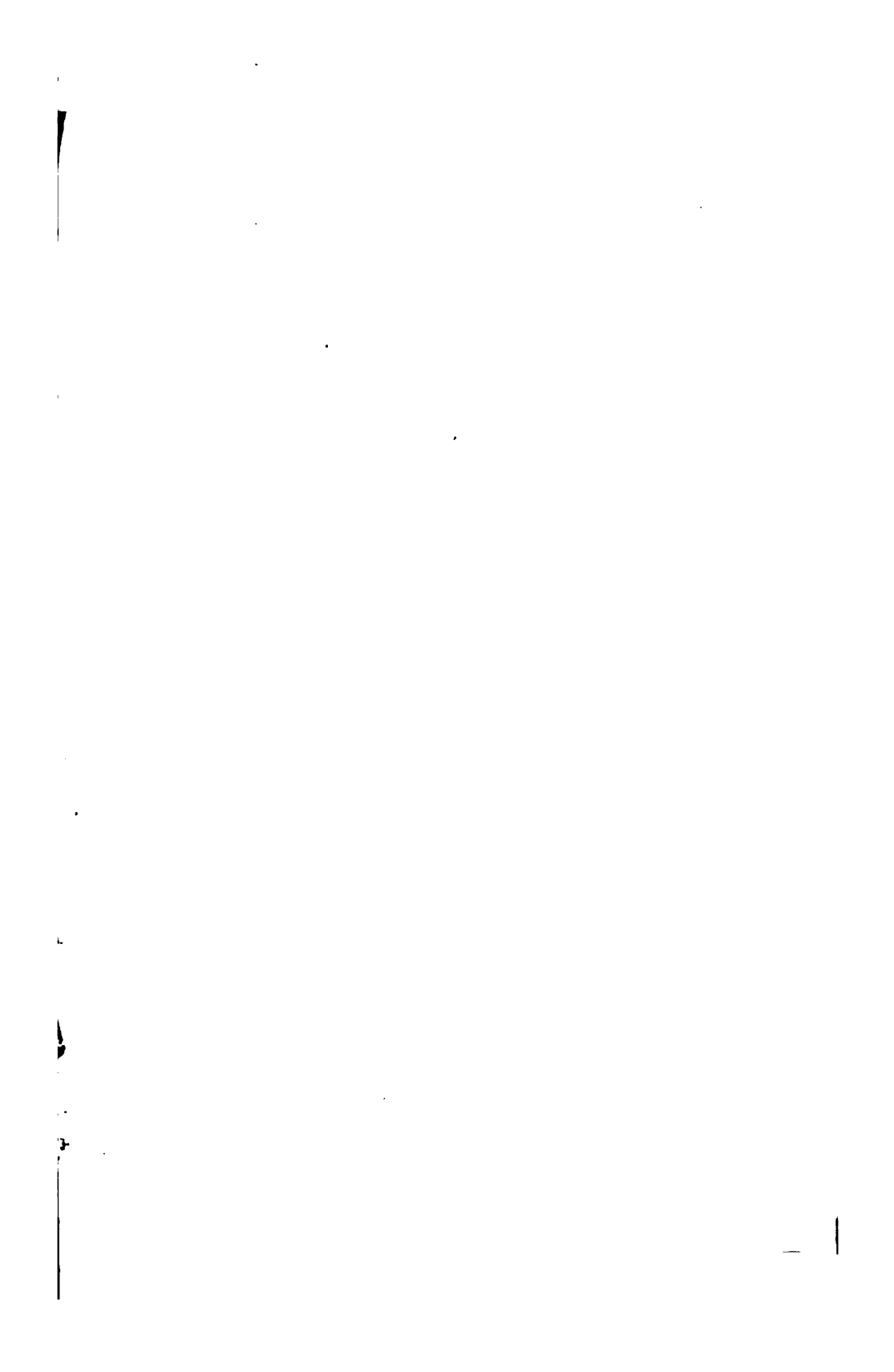
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